

DA2LBIN1

Trial

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

12 Cr. 152 CM

5 MICHAEL BINDAY,
a/ka/ Sealed Defendant 1,
6 JAMES KEVIN KERGIL,
a/k/a Sealed Defendant 2,
7 and MARK RESNICK,
a/k/a Sealed Defendant 3,

8 Defendants.

9 -----x

10
11
12 October 2, 2013
10:12 a.m.

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15 Before:

16 HON. COLLEEN McMAHON,

17 District Judge
18 and a jury
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APPEARANCES

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United States Attorney for the
Southern District of New York
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ZACHARY FEINGOLD,
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Assistant United States Attorneys

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BY: JANEANNE MURRAY, Esq.
Of counsel

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1 (Jury not present)

2 THE DEPUTY CLERK: Case on trial continued. The
3 government and defendants are present. The jurors are not
4 present. We're down a juror.

5 THE COURT: I can't even attribute this to the
6 shutdown. This is a mess.

7 MR. ABRAMOWITZ: Madoff related case is picking a
8 jury, so there's more than the usual number of jurors.

9 THE COURT: Even so. It's just bad. When we finally
10 get the security pavilion built, hopeful we will --

11 THE DEPUTY CLERK: We're actually down two jurors.

12 THE COURT: -- arrange a variety of entrances that
13 will alleviate some of these problems.

14 Okay. Mr. Stavis, I was told you weren't here but
15 there you are.

16 MR. STAVIS: Here I am.

17 THE COURT: Good. Okay. So what have we agreed upon?
18 You'll note that I'm confident that we have an agreement.

19 MR. ABRAMOWITZ: Yes, I think we do.

20 THE COURT: Okay. Upon what have we agreed, what
21 shall I expect when I bring the jurors into the room?

22 MR. ABRAMOWITZ: Well, two separate parts of our
23 presentation. There are documents apart from the ones we went
24 through on the proffer that I will offer in evidence and have
25 displayed and I'll read from them. And then we'll go into the

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1 types of exhibits that we talked about yesterday in the proffer
2 where Ms. Juteau will take the stand. We will show them, and
3 she will read the highlighted portions.

4 THE COURT: Boy, is that going to be exciting.

5 MR. ABRAMOWITZ: Fascinating.

6 THE COURT: Okay. All right. Now, does our agreement
7 dispose of all of the outstanding applications including
8 Ms. Murray's separate application or does it not dispose of
9 Ms. Murray's separate application?

10 MS. MURRAY: It does not dispose of my separate
11 application, your Honor. I understand the government still
12 opposes that.

13 THE COURT: Okay.

14 MR. STAVIS: I have three exciting documents also. I
15 think one of them has so far received the government's consent
16 and the other two they're thinking about.

17 MR. FEINGOLD: Actually, we object to the other two,
18 your Honor. We can take that up now if you want.

19 THE COURT: Yeah. Let's just do this.

20 MR. FEINGOLD: This is my copy from Mr. Stavis, but I
21 think I'm familiar with them.

22 THE DEPUTY CLERK: Extra copies?

23 MR. FEINGOLD: So, your Honor, first defense
24 exhibit --

25 THE COURT: I think I'll let Mr. Stavis offer them and

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1 then you can tell me what's wrong with them.

2 MR. STAVIS: Yes. The first is a Defense
3 Exhibit 1005.

4 THE COURT: Yes.

5 MR. STAVIS: Which is an email that comes from the
6 Lincoln files and is indisputably authentic. It's an email
7 from Ken Elder, who's the AVP of market conduct compliance at
8 Lincoln. Your Honor has heard testimony about him. And it's
9 to Thomas McDonald -- he's the case agent in the case --
10 concerning a subpoena. And he refers to -- Mr. Elder refers to
11 Agent McDonald as Tom and the content is about files.

12 The content is not important. It's not being offered
13 for its content. It's being offered to show the
14 interrelationship between the Lincoln Financial Group and the
15 FBI in this case. It's not collateral because it goes to the
16 bias of Mr. Burns, the Lincoln Financial Group witness who
17 testified for the government.

18 THE COURT: The government's objection is sustained.
19 Next.

20 MR. STAVIS: On what grounds, your Honor?

21 THE COURT: It's irrelevant.

22 Next.

23 MR. STAVIS: Next is Defense Exhibit 48, which is
24 starts on the bottom with Rose Flanagan, who is an employee of
25 R. Binday Plans & Concepts and your Honor has heard testimony

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1 about her from Tracey Robinson, government witness. She's
2 sending a signed policy over to MetLife and MetLife's response
3 is show us the money. I'm not being -- it comes from the
4 MetLife files. That is not being offered for the truth of the
5 statement show us the money, but for the reaction to the
6 receipt of the policy by Rose Flanagan of R. Binday Plans &
7 Concepts Ltd.

8 MR. FEINGOLD: Your Honor, first, it's not a response
9 to Rose Flanagan. It's an internal email at MetLife.

10 THE COURT: Yes, from MetLife to MetLife.

11 MR. FEINGOLD: Right. It's hearsay.

12 THE COURT: Government's objection is sustained.

13 MR. STAVIS: It's not offered for the truth.

14 THE COURT: The government's objection is sustained.

15 MR. ABRAMOWITZ: Your Honor, may we take advantage of
16 the fact that the jury is not here just to offer the defense
17 exhibits into evidence, just the numbers. I apologize.

18 THE COURT: I have a long list from Ms. Murray.

19 MR. ABRAMOWITZ: I apologize.

20 THE COURT: If there's anything Ms. Murray wants to
21 add to the letter, she's welcome to do so. You can rest
22 assured from the number of marks on it that I have read it
23 carefully, and I'd like to get right to the government's
24 response thereto.

25 MS. MURRAY: Your Honor, I have nothing to add.

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1 THE COURT: Thank you, Ms. Murray.

2 Okay. Now, the government's response to Ms. Murray's
3 letter.

4 MR. FEINGOLD: Your Honor, I think first we rely on
5 your Honor's initial ruling on this in which you relied I
6 believe on your in limine order.

7 THE COURT: Forget about in limine and here's why. As
8 I said yesterday to Ms. McCallum, who had to bear the brunt of
9 this, the reason I detest in limine motions in criminal cases
10 where nobody shows me anything, where I have no background, no
11 immersion in the evidence, unlike every civil case I'm involved
12 in, is you want me to rule in a vacuum. And then you stand up
13 and say but you've already ruled.

14 For example, yesterday, you've already ruled evidence
15 of negligence can't come in. Between you, me, and the
16 lamppost, I don't think the emails I saw were evidence of
17 negligence. So if they were in front of me during the in
18 limine motions, I would have denied the motion as to those
19 documents.

20 So forget about the in limine motion. We're starting
21 from scratch.

22 MR. FEINGOLD: Certainly, your Honor. Let's look at
23 this document where it talks about universal life sales as a
24 whole. There's no reference of STOLI, IOLI, or any
25 characteristics of it. I think it's misleading and should not

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1 be allowed in.

2 MS. MURRAY: Your Honor.

3 THE COURT: You can't equate universal life and STOLI.
4 You can't do it. There is no evidence, unless you put on
5 evidence that equates them, because right now there's no
6 evidence in the record that does; and there's a lot of evidence
7 that draws a very clear line between universal life business
8 and a subset of that business which is STOLI.

9 MS. MURRAY: But the point is simply to show the size
10 of the universal life profits.

11 THE COURT: But universal life isn't at issue in this
12 case. STOLI is at issue in this case. If this document showed
13 the size of the STOLI business, you'd be on firm ground. But
14 it doesn't. It doesn't. And, therefore, its probative value
15 is negligible and the potential for confusion is very great.

16 MR. STAVIS: Your Honor.

17 THE COURT: Yes.

18 MR. STAVIS: There was an exhibit, a defense exhibit
19 that the government did agree to, and this might be the
20 appropriate time, Defendant's Exhibit 51. That was the AIG.

21 MR. FEINGOLD: No objection, your Honor.

22 THE COURT: Okay. So that's in.

23 (Defendant's Exhibit 51 received in evidence)

24 THE COURT: And you want to introduce?

25 MR. ABRAMOWITZ: A list.

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1 THE COURT: Do we have a list? Because I like the way
2 the government was doing this where they would say all the
3 exhibits on a document that was clearly denominated and a copy
4 of that document was given to the court reporter and we didn't
5 have to.

6 MR. ABRAMOWITZ: I have a list, but we have to just
7 take out what's written in between and we will supply the list
8 to the court reporter and to the Court. But I'll read it now,
9 but we will supply a written list to you and the court
10 reporter.

11 We offer Defendant's Exhibit 2, 5, 7, 14, 51, 165,
12 168, 169, 235, 3434, 3455, 3456, 3457, 3458, 3459, 3460, 3461,
13 237, 238, and 239.

14 THE COURT: And that's without objection from the
15 government.

16 MR. FEINGOLD: No, your Honor. The government is just
17 looking at copies right now of the second half of that list.

18 THE COURT: I knew this wasn't going to be easy. Get
19 me what you object to.

20 (Pause)

21 MS. MURRAY: Your Honor, may I supplement my
22 application?

23 THE COURT: You mean the one I denied?

24 MS. MURRAY: Yes.

25 THE DEPUTY CLERK: We're ready with the jurors.

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1 THE COURT: I'm ready with the jurors.

2 Yeah, sure. Because they're not ready, so go ahead.

3 MS. MURRAY: Your Honor, Government Exhibit 2971,
4 which is an audit memo of the Lincoln Financial Group which is
5 in evidence, it actually states on page 4 that assuming that
6 IOLI makes up ten to 15 percent of sales, they're discussing
7 the return on investment and how it wouldn't have a huge
8 economic impact. I think that because there's something in
9 evidence from Lincoln saying that ten to 15 percent of
10 universal life sales are --

11 THE COURT: It says assuming. It doesn't say it is.

12 MS. MURRAY: Then I think it's a fair argument to be
13 able to argue to the jury that ten to 15 percent of
14 \$400 million of profits over two years is something I should be
15 able to argue to the jury as evidence of bias and motive by the
16 insurance witnesses.

17 MR. FEINGOLD: I need to see the document.

18 Look, I think there's evidence, there's evidence that
19 insurance companies collect and received premiums on these
20 policies.

21 THE COURT: She's trying to establish the magnitude.
22 That's what this is about. It's not a bad counter,
23 Mr. Feingold. It's really she may have gotten me here. It's
24 your exhibit.

25 MR. FEINGOLD: Here's the full paragraph. Although

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1 difficult to estimate, although difficult to estimate, we
2 regard the overall economic impact of IOLI and life settlements
3 as minor. In terms of new business, we estimate that IOLI
4 business produces return on earnings in the 7.9 percent range
5 or, I'm sorry, ROEs in the 7 to 9 percent range. Assuming that
6 IOLI makes up ten to 15 percent of sales, the overall ROE on a
7 new business -- on new business would be affected by less than
8 1 percent.

9 THE COURT: Okay. So here's what they say. They say
10 it's hard to calculate. It looks like it's seven to 9 percent.
11 Even assuming that it's a little more than that, it's like a
12 1 percent contributor to the bottom line.

13 I have to say I don't think it's unfair given that you
14 introduced that document, for her to introduce a document --
15 not the whole thing, but the financial --

16 MS. MURRAY: The chart.

17 THE COURT: -- piece that shows what number would
18 correspond to that 1 percent. I don't think that's unfair. I
19 mean 1 percent in a vacuum versus 1 percent of \$40 million, it
20 gives it a context. It makes it concrete.

21 MS. MURRAY: The 7 to 9 percent deals with returns on
22 earnings. That's not estimating the amount of IOLI. They're
23 estimating ten to 15 percent IOLI in that document.

24 MS. McCALLUM: Your Honor, may we have a moment?

25 THE COURT: Yes.

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1 MR. FEINGOLD: Your Honor, we just received these
2 exhibits to review, so.

3 THE COURT: Come on.

4 MR. ABRAMOWITZ: You had them yesterday.

5 THE COURT: What did you do all afternoon yesterday?

6 MR. FEINGOLD: Your Honor, Mr. Abramowitz just
7 indicated to us, we were aware of eight of the precise exhibits
8 that he was going to introduce. I'm not getting to the policy
9 file stuff.

10 MR. ABRAMOWITZ: I thought --

11 MR. FEINGOLD: There are 13 exhibits that he's
12 introducing under our authenticity stipulation. We didn't know
13 they were going to introduce these exhibits. I think we need
14 to look at them before we state our objection.

15 THE COURT: You know what, it's 10:30. I'm putting
16 the jurors in the box. We're now going to do this one document
17 at a time with the jury in the box. I'm not going to have them
18 sitting back there. I sent them home yesterday. They did no
19 work yesterday and they're probably pissed about it. I
20 certainly am.

21 MS. McCALLUM: Your Honor, the government just needed
22 to verify that these exhibits were ones that we had discussed.
23 That's all. And we have verified and we don't have an
24 objection to their introduction. We just needed a few minutes
25 to review.

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1 THE COURT: What exhibits are you offering again,
2 please, Mr. Abramowitz?

3 MR. ABRAMOWITZ: In the order on the sheet that I've
4 given to the Court and to the court reporter, Defendant's
5 Exhibit 5, 7, 165, 168, 169, 2, 14, 51, 235, 3434, 3455, 3456,
6 3457, 3458, 3459, 3460, 3461, 237, 238, 239.

7 MR. FEINGOLD: Now the government has had an
8 opportunity to review those exhibits, no objection.

9 THE COURT: Admitted.

10 (Defendant's Exhibits 5, 7, 165, 168, 169, 2, 14, 51,
11 235, 3434, 3455, 3456, 3457, 3458, 3459, 3460, 3461, 237, 238,
12 239 received in evidence)

13 THE DEPUTY CLERK: This sheet is marked?

14 THE COURT: That sheet is Defendant's Exhibit 1000.

15 MR. ABRAMOWITZ: Make it 5000.

16 THE COURT: 5000, Defendant's Exhibit 5000.

17 (Continued on next page)
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1 (Jury present)

2 THE COURT: Good morning. All right. The government,
3 as you know, has rested.

4 Mr. Abramowitz, does Mr. Binday wish to put in a case?

5 MR. ABRAMOWITZ: Yes, we do, your Honor. May I?

6 THE COURT: And I believe that, Mr. Stavis and
7 Ms. Murray, I believe that some portion of this case is being
8 put in on behalf of all three of the defendants.

9 Is that correct?

10 MR. STAVIS: That's correct, your Honor.

11 MS. MURRAY: Correct, your Honor.

12 THE COURT: Okay.

13 MR. ABRAMOWITZ: In fact, I believe all of what we're
14 about to do is on behalf of all three defendants.

15 THE COURT: Okay. So let me formally ask: Does
16 Mr. Kergil wish to put in a case, Mr. Stavis?

17 MR. STAVIS: Yes.

18 THE COURT: Yes, fine.

19 MR. STAVIS: Defendant's Exhibit 51 in evidence, which
20 has previously been discussed.

21 THE COURT: And, Ms. Murray, does your client,
22 Mr. Resnick, wish to put in a case?

23 MS. MURRAY: Your Honor, I'm joining with Mr. Binday.

24 THE COURT: Okay, fine.

25 So this evidence is three trials, but all three of

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1 them have decided that they want to introduce the same
2 evidence. So instead of introducing it three times, we're
3 going to do it once.

4 Mr. Abramowitz.

5 MR. ABRAMOWITZ: May I. Thank you.

6 We're going to look at some Defendant's Exhibits that
7 have previously been admitted into evidence.

8 May we put up Defendant's Exhibit 7, and I'm going to
9 read the highlighted part. This is I'll read the top. This is
10 AIG American General Life will no longer approve applications
11 received that are investor owned, stranger owned, or viatical
12 transactions.

13 And I'll read the highlighted section. In order to
14 verify that applications and quotes received are consistent
15 with this new policy, all of the following documents must be
16 received for any single permanent life insurance application
17 for a proposed insured that is age 70 or greater with a
18 requested death benefit of a million dollars or greater.

19 Third line, third bullet is a copy of the proposed
20 insured's most recently filed tax return, IRS form 1040.

21 The bullet on the bottom is the policy's annual
22 premium cannot exceed 20 percent of the proposed insured's
23 adjusted gross income as stated on their most recent tax return
24 regardless of who is paying the premium or if it is financed.

25 And this is a document that's dated May 18, 2006.

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1 Can we put up Defendant's Exhibit 51 in evidence. And
2 looking at the second bullet, since this date, incoming volume
3 on cases age 70 plus have decreased and pending volume has
4 dropped with many cases being withdrawn.

5 Total pending/cond issued cases have dropped from 659
6 on 5/19 to 372 on 7/6.

7 The next highlighted bullet, field reaction has been
8 mixed, with some producers withdrawing cases and others
9 submitting full financial UW requirements.

10 Can we go to -- is there a second page to that? No.

11 Can we go to Defendant's Exhibit 2, and read the
12 highlighted portion. This is dated, first of all, look at the
13 bottom, this is dated 7/25/06.

14 AIG life brokerage. Effective May 18, life brokerage
15 changed the maximum issue ages to 69 from 80 on ten year LTG
16 Ultra and to 74 from 90 on most single life universal policies
17 in an attempt to curb participation in IOLI transactions. UL
18 production dropped \$2 million in June due to refusing this
19 business.

20 And now can we go to Defendant's Exhibit 5. This is
21 dated August 29, '06.

22 Notice regarding underwriting guidelines that take
23 effect on September 1, 2006. For all applications submitted
24 through the independent distribution platform for products of
25 American Life Insurance Company and the United States Life

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1 Insurance Company in the City of New York.

2 Bullet point: Formal applications approved, issued or
3 with effective dates on or after September 1, 2006, will be
4 handled under our new underwriting requirements and approach.
5 Tax returns will not be required and the 20 percent of AGI test
6 will not be applied. New plans and rates will be available.

7 Now can we turn to documents from Lincoln National
8 premier partner program.

9 Can we put up Defendant's Exhibit 237. 237 is a
10 Lincoln -- on the bottom -- a Lincoln document, in the files of
11 Lincoln, that reads: Contestable death claims on ICAS with
12 issue age 69 and face of greater than \$1 million. Third
13 quarter 2007. And the highlighted name is Michael Bindow,
14 suspected IOLI, trust documents are same format and content
15 used by RangeTree.

16 Can we go to Defendant's Exhibit 168. This is a 2008
17 life annuity premier partner program. The premier partner
18 program is designed to recognize the best of our best -- our
19 top producers and managers. The awards, benefits, and
20 incentives you receive as a premier partner are our way of
21 thanks you for entrusting us with so much of your business, and
22 represent a promise that we will continue to provide the tools,
23 support, and service needed to be the partner of choice. Being
24 a "member" of this exclusive group provides you with advantages
25 and entitlements. This brochure gives you an overview of the

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1 2008 life and annuity premier partner benefits.

2 Can we go to Defendant's Exhibit 169. And the date is
3 year end. This is a premier partnership master report, year
4 end, 2008. And the names James Kergil, James K. Kergil, Paul
5 A. Krupit, and Mark A. Resnick. And on financial owners Binday
6 R. Plans and Company and Life Insurance Services Inc., Binday
7 R. Plans and Company.

8 Can we go to Defendant's Exhibit 165. Can we make
9 that larger, please. This is reads premier stock option grants
10 have been issued for Crump people that you designated to
11 receive stock. This is from premier partners and Michael
12 Binday is listed in the highlighted portion.

13 Can we go to Defendant's Exhibit 235, please. Group
14 policyholder, Lincoln National Group life insurance trust.
15 Insured is Marilyn Nurik. The date of the policy, this is in
16 Lincoln policies, August 21, 2008. Age and sex, 83, female.
17 Specified amount, 2,500,000.

18 Can we go to Exhibit 3434, another policy dated
19 August 11, 2008. The name of Alma Ruth Lapp, age and sex, 76,
20 female. Specified amount, 2,500,000.

21 Can we go to 3455, please. This is insured, Elouise
22 Hails. Age and sex, 77, female. Specified amount, \$4 million.
23 The policy date, December 1, 2007.

24 3456, please. This is an application from Robert
25 Haug, insured as Robert Haug, 79, male. Specified amount,

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1 \$2 million. Excuse me, that's not the application. It's the
2 policy itself. The date is July 18, 2008.

3 Can we go to 3457, please. This is a policy issued to
4 Oswald Heaton. Age and sex, 80, male. Specified amount,
5 2,400,000. And the date is March 13, 2008.

6 Can we go to 3458. That's a policy from Corrine
7 Roscoe, age and sex, 78, female. Specified amount, \$3 million.
8 The certificate date is July 15, 2008.

9 Can we go to Defendant's Exhibit 3459. Insured is
10 Opal Headrick, age and sex, 79, female, \$3 million. The date,
11 May 24, 2008.

12 Defendant's Exhibit 3460. Martin L. Bromberg, age and
13 sex, 74, male. Specified amount, 3,700,000. April 26, 2008.

14 And Defendant's Exhibit 3461. Policy issued to
15 Thomasa Contreras, age and sex, 74, female. Specified amount,
16 \$4 million. Date is February 19, 2009.

17 And could we just briefly put back Exhibit 237. And
18 note the date. It says Michael Binday, suspected IOLI, third
19 quarter, 2007.

20 Now can we go to Defendant's Exhibit 238. This is a
21 document from Lincoln and it says investor or stranger-owned
22 life insurance. And I'm only going to read the highlighted
23 portions. I'll read the sentence starting with, The way most
24 of these sales are structured is that if the insured dies
25 within the first two years, proceeds are paid to the insured's

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1 heirs. Premiums are paid by the investors/lender. Trusts are
2 established that allow this transfer. Inducements are given to
3 the insured in the form of trips, cash, and the free insurance
4 for the first two years.

5 Then go to the highlighted portion, often applications
6 are submitted for high amounts and the target age group is 70
7 and up. Income and net worth figures are often inflated.
8 There are questions on the application regarding this type of
9 sale and premium financing. The single biggest red flag is the
10 ratio of premium to income. If the premium is higher than the
11 income, most likely premium financing is involved.

12 Can we go to Defendant's Exhibit 239, which is from
13 AXA life insurance company. And the title is underwriting red
14 flags for large life insurance policies, financed insurance,
15 and trust owned policies.

16 And the first highlighted paragraph, life insurance
17 and application issues: Application is for a large amount of
18 life insurance, over \$2 million.

19 Second one is insured over the age of 65.

20 And then under paragraph 2, financial underwriting
21 issues. Insurance need is vague "estate planning."

22 Personal ownership of a large amount of insurance for
23 a large estate and the purpose is "estate taxes or "estate
24 planning."

25 The next highlighted line, sufficiency of funds to pay

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1 large premium from current assets and/or income.

2 3. The application states no financing. But the
3 trust states that neither trust corpus nor trust income can be
4 used to pay for life insurance.

5 But the trust states that the grantor recognizes that
6 contributions to the trust will not be adequate to pay for the
7 life insurance and authorizes the trustee to borrow to pay the
8 premium.

9 Trust issues. Highlighted bullet is the trust is of
10 recent vintage.

11 And the last highlighted is trust situs is a different
12 state than the residence state of the insured and there was no
13 prior relationship with the trustee or connection with the
14 state of situs.

15 If we can go back and note the title of this memo.
16 This is underwriting red flags for large life insurance
17 policies, financed insurance, and trust owned policies.

18 Can we go to paragraph 5. The bullet line, the trust
19 states that it is irrevocable but authorizes someone other than
20 the grantor, usually the trustee or trust protector, to change
21 the beneficiaries of the trust and the list of potential
22 beneficiaries is not limited to parties that have a natural
23 insurable interest in the insured.

24 Now, your Honor, I'd like to go to -- excuse me a
25 minute.

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1 All right. Apologies, your Honor.

2 Defendant's Exhibit 14, please. This is from Union
3 Central, 2009 UNIFI individual division field sales
4 distribution VP manager, Estridge, variable compensation plan,
5 summary plan description.

6 And read the highlighted paragraph, due to
7 extraordinary circumstances in 2009, you will be measured on
8 your ability to sustain the key agencies that we have
9 identified in your region rather than the usual measure of
10 increasing productivity. In order to meet this goal, you will
11 need to sustain a percentage of the key agencies production as
12 compared to 2008.

13 And then under that, Bindow is highlighted and other
14 companies are listed as well.

15 Now, your Honor, I'd like to ask my colleague
16 Ms. Juteau to take the stand to read from some other exhibits.

17 THE COURT: Jim, will you please swear Ms. Juteau.

18 JASMINE JUTEAU,

19 called as a witness by the Defendants,

20 having been duly sworn, testified as follows:

21 MR. ABRAMOWITZ: It's not just emails.

22 THE COURT: The documents that have been introduced
23 into evidence.

24 THE WITNESS: I do.

25 THE COURT: Thank you. Would you state and spell your

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1 name for the record.

2 THE WITNESS: J-A-S-M-I-N-E, J-U-T-E-A-U.

3 DIRECT EXAMINATION

4 BY MR. ABRAMOWITZ:

5 Q. Ms. Juteau, can you move closer to the microphone, please.

6 And just for identification, by whom are you employed?

7 A. The law firm of Morvillo, Abramowitz, Grand, Iason &
8 Anello.

9 Q. And in what capacity are you employed?

10 A. I'm counsel of the firm.

11 Q. Can we put up Defendant's Exhibit 3363, and can you please
12 read the highlighted portions.

13 A. The name of the applicant is Eva Hartheimer, and her age is
14 80.

15 Q. And I'd read the top is life insurance application. Did
16 you read the age?

17 A. Yes, her age is 80.

18 Q. And can you go to page 14485. What amount is being applied
19 for?

20 A. \$2 million.

21 Q. Can we go to Defendant's Exhibit 3358, please. Please note
22 the date, read the date.

23 A. November 8, 2006.

24 Q. And can you read the highlighted portion of this exhibit.

25 A. Please be advised that I have not audited these financial

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Juteau - direct

1 statements and they are based solely on information provided by
2 my client.

3 Q. And can we go to the bottom right portion under the defense
4 exhibit list. And this is a document from American General; is
5 that correct?

6 A. That's correct.

7 Q. Can we go to Exhibit 3352.

8 MR. ABRAMOWITZ: They are in evidence.

9 I apologize. I thought they were on the list. But we
10 offer it in evidence.

11 MR. FEINGOLD: What are you offering?

12 MR. ABRAMOWITZ: 3352.

13 MR. FEINGOLD: No objection.

14 THE COURT: Admitted.

15 (Defendant's Exhibit 3352 received in evidence)

16 MR. ABRAMOWITZ: And 3358.

17 THE COURT: Admitted.

18 (Defendant's Exhibit 3358 received in evidence)

19 MR. ABRAMOWITZ: Maybe I can take a minute, your
20 Honor, and just go over this.

21 THE COURT: Is there another list we can read?

22 MR. ABRAMOWITZ: I have another list. Oral.

23 THE COURT: Okay.

24 MR. ABRAMOWITZ: Defendant's Exhibit 3352, 3358, 3363,
25 3364. Let's start with those.

DA2LBIN1

Juteau - direct

1 MR. FEINGOLD: No objection.

2 THE COURT: Admitted.

3 (Defendant's Exhibits 3352, 3358, 3363, 3364 received
4 in evidence)

5 MR. ABRAMOWITZ: And we're going to offer at the end
6 of this series 234, which is the policy.

7 MS. McCALLUM: No objection.

8 (Defendant's Exhibit 234 received in evidence)

9 (Continued on next page)

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DA2JBIN2

Juteau - direct

1 MR. ABRAMOWITZ: Apologies, your Honor, I thought it
2 was offered earlier.

3 BY MR. ABRAMOWITZ:

4 Q. Can we go to the application which is 3363. Can we quickly
5 go back to that. That is the application for Eva Hartheimer,
6 and then. Can we go to Exhibit 3358 from the files of American
7 General. Can we blow up -- start with real estate listed
8 there, the real estate is -- can you read that?

9 A. Real estate, \$1.5 million.

10 Q. Business interest?

11 A. \$2.5 million.

12 Q. Personal property?

13 A. \$1 million.

14 Q. Pension, qualified plans and annuities?

15 A. \$3 million.

16 Q. Less total liabilities?

17 A. Zero.

18 Q. Total net worth.

19 A. \$8 million.

20 Q. And now can we go to the highlighted portion of this
21 document. Can you read that please?

22 A. Please be advised that I have not audited these financial
23 statements and they are based SOLI on information provided by
24 my client.

25 Q. Can we go to Exhibit 3352, please, and particularly to Page

DA2JBIN2

Juteau - direct

1 14367. Can you read the highlighted portions of this, Ms.

2 Juteau?

3 A. Begin date: 2007-01-04. We have a letter from an attorney

4 who is stating he has helping her with some estate issues.

5 Also provided breakdown of NW, but also stated he did not audit

6 these figures and they are being regurgitated by the proposed

7 insured.

8 UW to CC. To GA-please note, the letter from the

9 lawyer does not fulfill the third-party financial requirement

10 as he states in the body of the letter that these figures were

11 supplied by the client herself. We will need verification of

12 finances from a third party (CPA tax preparer, accountant.)

13 Q. Can we go to Page 14349. Can you read the highlighted

14 portion there.

15 A. Begin date, 2007-01-10. IR: Inc 200 K and NW 8 million.

16 Financial letter from attorney (BF 7) verifies NW as 8 million

17 with only 1.5 million in real estate. Okay financially for

18 estate needs.)

19 Q. What is the date of that comment?

20 A. January 10th, 2007.

21 Q. Can we go to 3352, please. And Page 14375. Can you read

22 the date?

23 A. May 24th, 2006.

24 Q. And can you read the note that is highlighted?

25 A. The amount of insurance will limited to 20 percent of the

DA2JBIN2

Juteau - direct

1 applicants adjusted gross income. We will need tax returns
2 from 2004 or 2005.

3 Q. And then can we go to Page 14370. Can you read the
4 highlighted -- first the date?

5 A. The date is June 2, 2006.

6 Q. And then can you read the highlighted portion.

7 A. We can consider the above applicant for up to \$3 million of
8 elite UL or elite index UL coverage at possible standard (not
9 preferred) rates plus \$5.00 slash \$1,000 slash 3 years subject
10 to the application Part A, routine age slash amount
11 requirements, IR completed by one of our approved vendors, NVR,
12 MIB, the most recently filed IRS Form 1040 from '04 or '05, the
13 premium financing disclosure for proposed insureds, and CPA
14 verified third-party financial statement.

15 Please note the premium allocation for this policy
16 cannot exceed 20 percent of the adjusted gross income.

17 Q. Did you read the date? I am sorry?

18 A. June 2, 2006.

19 Q. Can you go now to Page 14357. Note the date?

20 A. December 27, 2006.

21 Q. Can you read the highlighted note.

22 A. Bill, this is an older age case. See Joe's note in the
23 quote file history attached to this case. I know our
24 guidelines relaxed a little on the IRC Form 1040s (IC basis)
25 note we would need premium financing disclosure and CPA

DA2JBIN2

Juteau - direct

1 verified TPF statement. Note also that the premium allocation
2 for this policy cannot exceed 20 percent of the adjusted gross
3 income.

4 In this case the applicant's premium is 191K and her
5 unearned income is 200K. Per 9-1-06 guidelines dated we can
6 consider these cases on an individual consideration basis.

7 Based on her net worth, she does qualify for this
8 amount. My question would be what is her net worth made up of?
9 Real estate? Stocks and bonds.

10 Do you feel that this case would warrant the exception
11 of going over the standard 20 percent adjusted income? Here
12 premium is 99 percent of her unearned income.

13 Q. Can we go to Page 14355. Can we note the date?

14 A. This is December 28th, 2006.

15 Q. Can you read the highlighted portion.

16 A. Cheryl, remember we do not use the 20 percent rule any
17 more. We also don't request tax forms or limit the plan. As
18 long as we receive decent CPA info that justifies estate tax
19 needs, we are okay.

20 Q. Can we go to Page 14342, please.

21 MR. FEINGOLD: May I have a moment. I don't think we
22 have a copy of this part of the exhibit.

23 THE COURT: Okay.

24 MR. FEINGOLD: I apologize. My copy does now.

25 THE COURT: You have it now?

DA2JBIN2

Juteau - direct

1 MR. FEINGOLD: Yes. Ms. Choi does.

2 BY MR. ABRAMOWITZ:

3 Q. Can we read the highlighted portion starting with Bill.

4 A. Bill. Agency is seeking possible 3-4 million instead of 2
5 million. Estate preservation for this insured is around 6.7
6 million plus. No additional coverage in force. See your notes
7 below. It appears she qualifies financially for this amount
8 without any additional medical or financial requirements.

9 Q. Can we go to Page 14341, please. Can you note the date.

10 A. January 31, 2007.

11 Q. Can you read just the highlighted portion.

12 A. Cheryl, okay for new amount as a limit.

13 Q. Actually, if you can read the rest of that.

14 A. But I don't see the agent certification form and proposed
15 insured premium financing disclosure form which is routine for
16 age -- greater than age 70 and \$1 million and higher.

17 Q. Can we go to Defendant's Exhibit 364, just the first
18 page -- excuse me, 3364. Sorry. Can you just read the
19 highlighted portion?

20 A. The Eva Hartheimer irrevocable trust, dated the 28th day of
21 September, 2006.

22 Q. Can you read the -- you have the date. Can we go to Page
23 15295, please -- can you read the highlighted language.

24 A. The trustee, within his or her sole discretion, may apply
25 any cash value attributable to such policy to the purchase of

DA2JBIN2

Juteau - direct

1 paid-up insurance or extended insurance, or may borrow upon
2 such policy for the payment of premiums due thereon.

3 Q. Can now we do a split screen between pages 15296 and 15298,
4 please. Can you read which is the highlighted portion coming
5 from the left side or the right side? Just the right side.
6 Please read the highlighted portion.

7 Q. Powers of trustee?

8 A. Sorry. Article VII, powers of trustee.

9 Q. Can you read what the powers include?

10 A. To make loans in such amounts, upon such terms, secured or
11 unsecured, at such rates of interest, and to such persons,
12 firms, or corporations as they may deem advisable, and to
13 borrow from any source and mortgage or pledge trust property.

14 Q. Can we go to Page 15296 and 15297. Can you read the
15 highlighted portion that says A, starts with A?

16 A. To sell, with or without notice, at public or private sale,
17 partition, exchange, or otherwise dispose of any part of this
18 trusts real or personal property.

19 Q. Can we go to Exhibit 234 which is the policy,?

20 MR. ABRAMOWITZ: I offer that in evidence if it hasn't
21 been offered.

22 MR. FEINGOLD: What is the exhibit?

23 MR. ABRAMOWITZ: 234.

24 MR. FEINGOLD: It is already in.

25 MR. ABRAMOWITZ: Can we show Exhibit 234, please. The

DA2JBIN2

Juteau - direct

1 United States life insurance company, City of New York.

2 BY MR. ABRAMOWITZ:

3 Q. Can you read the name of the insured without the policy
4 number?

5 A. Eva Hartheimer.

6 Q. Would you read the highlighted portion, the age and the
7 base coverage.

8 A. The age is 81. Base coverage is \$4 million.

9 MR. ABRAMOWITZ: Can we go to Lincoln National, and in
10 that connection I offer Defendants' Exhibit 8, 3108, 3178,
11 3179, 3181 and 3182. This is the same applicant, Eva
12 Hartheimer for Lincoln National.

13 MR. FEINGOLD: No objection.

14 THE COURT: Admitted.

15 (Defendant Exhibits 8, 3108, 3178, 3179, 3181, 3182
16 received in evidence)

17 MR. ABRAMOWITZ: Can we show Exhibit 3178.

18 BY MR. ABRAMOWITZ:

19 Q. This is an application Jefferson Pilot Life Insurance
20 Company, and the applicant is Eva Hartheimer.

21 Is that correct?

22 A. That's correct.

23 Q. Can we go to 3179, please. Just read the highlighted name?

24 A. Eva Hartheimer.

25 Q. Can we go to 3178, at Page 36310 and Defendant's Exhibit

DA2JBIN2

Juteau - direct

1 3179. Would you read the highlighted portion on the left.

2 A. Annual earned income, 100K plus. Annual unearned income,
3 zero.

4 Q. Can you read the highlighted portion on the right side.

5 A. Annual earned employment income, zero. Annual unearned
6 investments income, 200,000.

7 Q. Can we go to Exhibit 3108, please. Read the -- first of
8 all, what date is it?

9 A. December 18th, 2006.

10 Q. Can you read the highlighted portion.

11 A. Eva Hartheimer general trust.

12 Q. Can we go to Page 33617. Can you read the highlighted
13 portion.

14 A. Memo to agent: Please advise if premium financing will be
15 used. Also, note premium of 211K exceeds annual income.

16 Please provide details of source of funds for premiums.

17 Q. Can we go to Page 33624, please. Can you read the
18 highlighted portion.

19 A. IOLI detection. Owner state of residence is different from
20 the insured state of residence. Review case for possible
21 non-recourse premium financing.

22 IOLI detection. Multiple applications exist for the
23 insured. Review case for possible non-recourse premium
24 financing.

25 Q. Can we go to Exhibit 3181, please, at Page 36322. Can you

DA2JBIN2

Juteau - direct

1 read the date and the highlighted language in the whereas
2 clause.

3 A. November 17th, 2006. An irrevocable trust consisting of
4 the life insurance policy or policies.

5 Q. Can we go to Page 36335, and read the highlighted portion.

6 A. The trustee, within his or her sole discretion, may apply
7 any cash value attributable to such policy to the purchase of
8 paid-up insurance or extended insurance, or may borrow upon
9 such policy for the payment of premiums due thereon.

10 Q. Can we go back to 3108 for a moment, defense exhibit. The
11 highlighted language, could you just read that again, please.

12 A. The Eva Hartheimer general trust.

13 Q. Can we go to 3182, please, Exhibit 3182. Could you read
14 the highlighted portion.

15 A. Jefferson Pilot Life America Insurance Company. Insured:
16 Eva Hartheimer. Policy No. LF15567044.

17 Q. Can you go to Page 36206, please, and read the highlighted
18 portion.

19 A. Planned premium, \$205,800 annual.

20 Q. Can we go back to 3178 and 3179, and compare the premium to
21 the income listed on that exhibit.

22 A. The planned premium is \$205,800 annually. The annual
23 earned income is 100,000 plus.

24 Q. Can we go back to 3179 and read the highlighted portion of
25 the planned premium and then the income.

DA2JBIN2

Juteau - direct

1 A. The planned premium is \$205,800 annual. The annual
2 unearned investment income is \$200,000.

3 Q. Can we go to Defendant's Exhibit 8, please, at Page 88563.
4 Can you read the highlighted portion.

5 A. Financial guidelines-7-24-08. Yes, the income should be
6 reviewed and compared to the illustrated premium, especially at
7 the older ages (70 plus) to be sure the premium is an
8 acceptable percentage to income.

9 As a general rule of thumb, the premium should not be
10 more than 25 percent of annual income.

11 Q. What is the date of Defendant's Exhibit 8?

12 A. July 24th, 2008.

13 Q. Can we go to Exhibit 3182, please. Can you read the
14 highlighted portion, please?

15 A. Insured: Eva Hartheimer. Age and sex, 80, female.
16 Specified amount, \$4 million. Policy date, December 1, 2006.

17 MR. ABRAMOWITZ: We are going on to another group
18 group of exhibits from American General. Defendants offer into
19 evidence 3271, 3272, 3273, 3275.

20 MR. FEINGOLD: No objection.

21 THE COURT: Admitted.

22 (Defendant Exhibits 3271, 3272, 3273 and 3275 received
23 in evidence)

24 MR. ABRAMOWITZ: Can we show 3273 and go to Page
25 16305, please.

DA2JBIN2

Juteau - direct

1 BY MR. ABRAMOWITZ:

2 Q. Ms. Juteau, can you read the highlighted portion on this
3 application to American General.

4 A. Yes. The name is Myra Davis, her current age is 78. Her
5 household income is \$540,000. And her net worth is 15 million
6 \$470,000.

7 Q. Can we go to Defense Exhibit 3272, at Page 16276. Can you
8 read the highlighted portions.

9 A. AIG-senior market comprehensive inspection. Name: Myra
10 Davis.

11 Q. Can we put up also 3273 and Page 16305. Can you read the
12 highlighted portion on the top of net worth.

13 A. \$15,470,000.

14 Q. Can you read the highlighted portion of the net worth on
15 the second.

16 A. \$10,828,000.

17 Q. Can you go to Page 16272. What is the total income listed?

18 A. \$260,000.

19 Q. And can you go to Page 16273, and just read the net worth
20 statement on that page.

21 A. \$10,828,000.

22 Q. Back to Page 16305, what is the net worth listed on that
23 one?

24 A. Net worth is \$15,470,000.

25 Q. Now, can you look at the highlighted portion of the income

DA2JBIN2

Juteau - direct

1 on the first document.

2 A. \$540,000.

3 Q. And the highlighted portion of the income on the second
4 one?

5 A. \$260,000.

6 Q. Can we go to Defendant's Exhibit 3275, please, at page
7 0016220. Go back to 3275 for a moment. Can you read that?

8 A. Myra Davis, personal financial statement, May 15th, 2008.

9 Q. And now can we go to Page 16220 and read the highlighted
10 text?

11 A. A compilation is limited to presenting your representations
12 in the form of a financial statement. I am not independent
13 with respect to this personal financial statement, nor did I
14 examine, review or otherwise try to verify the amounts used in
15 the statement. Accordingly, I do not express an opinion or any
16 other form of assurance on it.

17 Q. Now can we go to 3271, and can we go to page 0016557. Can
18 you read the highlighted portion.

19 A. Begin date: 2008-08-20. Financially: I did a Zillow dot
20 com check on the two residences mentioned on the IR.

21 11305 Westland Circle in Boynton Beach, Florida does
22 not exist but neighborhood houses only in the upper 300,000 to
23 low 400,000 range.

24 320 Portofino Place in Melville, New York is only
25 worth \$773,000. This does not come close to their admitted

DA2JBIN2

Juteau - direct

1 real estate holdings that they mention on the IR. She says she
2 has other real estate holdings. Should we pursue or do you
3 feel okay as is.

4 Q. Can you go to page 0016540, please. Can you read the
5 highlighted text.

6 A. Begin date is 2008, 10-10. Looking at the picture on
7 Zillow, it appears to be a condo complex, which I doubt is in
8 the \$3 million range.

9 Secondly, Page 1 lists a different owner of the
10 Boynton Beach, Florida residence, but lists her as the owner on
11 Page 2.

12 Q. Can you, in the first paragraph, can you read where it says
13 I find it useless.

14 A. I find it useless as Page 1 says the average price of a
15 house in the Long Island neighborhood is in the \$300,000 range,
16 but on Page 2 it says it is worth over \$3 million.

17 Q. Can you go to page 0016539, please. Can you read the
18 highlighted text.

19 A. Begin date, 2008-10-13. So adding it all up, I get a
20 little over 1 to \$1.5 million in real estate holdings and not
21 much else. So I don't see the financial justification. Her
22 CPA didn't verify the holdings so that doesn't help us. So
23 whether they need to show stock slash brokers statements
24 showing the 7.3 million in holdings along with real estate
25 holdings, or I wouldn't issue since the evidence we have isn't

DA2JBIN2

Juteau - direct

1 holding up to the amount she is telling us.

2 Q. Can you please go to Page 16524 and read the highlighted
3 text.

4 A. Begin date: 2008-12-05. As far as the real estate
5 holdings, senior management ran a detailed property search
6 (which we paid for) and it did not list Myra Davis as owner of
7 many of the properties you list. It listed a total of about \$1
8 million of real estate holdings. It did not list any
9 apartments in the Great Neck or Riverdale. It did mention a
10 small home in Far Rockaway, some Florida properties and the one
11 in Melville.

12 If you have documentation to support her ownership in
13 additional properties such as Riverdale and Great Neck, please
14 forward it over.

15 Again, willing to up to \$5 million but will need to
16 amend that the guardian policy listed on the application was in
17 error and is not in force.

18 Q. Can we go up to the top of that right under comments, and
19 read sent to GA, and read the first full paragraph, too.

20 A. Sent to GA (in response to e-mail).

21 Michael, good morning. I did not make it to the life
22 supervisors last night as our company did not purchase a table
23 this year. Sorry I was not able to finally meet you. As the
24 guardian policy is no longer in force, I will be able to offer
25 \$5 million. Regret this fact was never placed in the file.

DA2JBIN2

Juteau - direct

1 Q. Can we then go to page 0016522, please, and read the
2 highlighted portion.

3 A. Begin date: 2008-12-16. These are certificates of
4 ownership for three cooperative apartments in in New York (2 in
5 the Bronx, one in Great Neck).

6 I Zillowd all three. The 2 in the Bronx probably go
7 for about \$250,000 apiece as that is what comparable apartments
8 near -- apartments appear to be going for in that building.

9 The other apartment, in Great Neck, is not found on
10 Zillow.

11 Thoughts: Do these certificates distributed in 1985
12 and 1986, prove current ownership? They are not listed on the
13 e-search.

14 This just appears to be another agency trying to over
15 insure an elderly life. If these properties are being used to
16 generate rental income, I would presume they would be listed on
17 her tax returns (with addresses and income generated).

18 I had already increased this to \$5 million.

19 MR. ABRAMOWITZ: I offer Defense Exhibit 233, which is
20 the policy.

21 MR. FEINGOLD: No objection.

22 THE COURT: Admitted.

23 (Defendant Exhibit 233 received in evidence)

24 BY MR. ABRAMOWITZ:

25 Q. Can we show Defendant's Exhibit 233 and can you read the

DA2JBIN2

Juteau - direct

1 highlighted portion, please.

2 A. Myra Davis Policy Number U10019421L.

3 Q. Can we read the base coverage.

4 A. The base coverage is \$5 million.

5 Q. I am not sure, did you read the date?

6 A. The date of issue is December 28th, 2008.

7 MR. ABRAMOWITZ: We offer Defendant Exhibits 30, 38
8 and 3140.

9 MR. FEINGOLD: No objection.

10 THE COURT: Admitted.

11 (Defendant Exhibits 30, 38 and 3140 received in
12 evidence)

13 BY MR. ABRAMOWITZ:

14 Q. Can we go to Exhibit 3140, please. Can you look at the top
15 and read which company this is being exhibited to?

16 A. Jefferson Pilot Financial.

17 Q. What is the name of the applicant?

18 A. James T. Farrell.

19 Q. And the date of birth was?

20 A. March 12, 1935.

21 Q. Can you look at Item No. 28. What is the amount of the
22 insurance listed there?

23 A. \$4 million.

24 Q. Can we go to Exhibit 3038. Go to Page 33828 and read the
25 highlighted portion.

DA2JBIN2

Juteau - direct

1 A. Have received the Form LF06658, and if this case is not
2 being premium financed then how is this 170K premium going to
3 be paid? Please give specific details.

4 Q. Can you read the highlighted text above that.

5 A. Assessment: Need an accountant's statement with a
6 breakdown of all assets and liabilities. Need a copy of the
7 estate plan.

8 Q. Can you go to Page 33830 and please read the highlighted
9 text.

10 A. Age 72 and worried about income replacement but the
11 majority of income is in unearned. The trust was set up
12 5-07-same address as the applicant-no planning done?

13 No inforce insurance and now at 72 he is convinced to
14 purchase \$4 million worth with a 4.5 million net worth and
15 154K?

16 Q. Can you read the next entry.

17 A. Problem is finances. Case is indicated as not being
18 premium financed. Has no formal estate plan, and balking
19 regarding getting an accountant's statement. Should I let this
20 go with an IOLI amendment?

21 BY MR. ABRAMOWITZ:

22 Q. Look at Government Exhibit 606 which was previously
23 admitted. That is the Jefferson Pilot policy that was issued.
24 Is there a date on that page? Maybe not on that page.

25 What is the -- there we go.

DA2JBIN2

Juteau - direct

1 A. The date is September 9th, 2007.

2 Q. And the specified amount?

3 A. \$4 million.

4 Q. And the insured is Mr. Farrell. Is that correct?

5 A. That's correct.

6 MR. ABRAMOWITZ: We offer Defendant's Exhibit 3042 and
7 3101 into evidence. This is from Lincoln.

8 MR. FEINGOLD: No objection.

9 THE COURT: Admitted.

10 (Defendant Exhibits 3042 and 3101 received in
11 evidence)

12 BY MR. ABRAMOWITZ:

13 Q. Can we go to Exhibit 3101, please, and go to the Page 33857
14 and please read the highlighted text.

15 A. Cover letter from agent explaining how the 251K of premium
16 is to be paid with income of 225K. Per e-mail 8-30, savings
17 and income will be used to pay premiums. Thank you. Okay with
18 that information on the premium. Just need IOLI form for
19 issue.

20 Q. Can we go back to 3042 and see for whom this note applies.
21 Silas -- can you RE that, please?

22 A. Insured: Silas Griffin, Jr.?

23 Q. Can you read the highlighted portion on the right side.

24 A. Planned premium, \$270,840.00.

25 Q. Can we go to Page 33866 and 33867 and look at the

DA2JBIN2

Juteau - direct

1 highlighted portion. Please read it.

2 A. Dawn, please advise if Jefferson Pilot and/or Lincoln Life
3 will do a personal history report in conjunction with the
4 inspection report that the agent will provide.

5 Q. Is that whole portion of the exhibit that you read?

6 A. No, just the portion on the right.

7 Q. Can we please see the highlighted portion on the left.

8 A. No, we should not request a PHI, if the agent is ordering
9 the inspection report.

10 Q. Can we go to Page 33957, and can you read the highlighted
11 portion.

12 A. June 7, 2007, IOLI detections. Multiple applications exist
13 for the insured. Review case for possible non-recourse premium
14 financing. No financials on app. Retention amount exceeded UW
15 amount exceeds financial guidelines.

16 Q. Can we go to Exhibit 3042, please. Read the highlighted
17 portion as to who the insured is.

18 A. Silas Griffin, Jr.

19 Q. And can you go to Page 33857 and also keep up 3042.

20 According to Exhibit 3101, what was the annual income
21 reported?

22 A. Income of 225,000.

23 Q. Looking at 3042, what was the planned premium?

24 A. \$270,000.

25 Q. Can we show Government Exhibit 951, please. It is already

DA2JBIN2

Juteau - direct

1 in evidence. That is the policy that was issued to

2 Mr. Griffin. Can we show the amount and the date.

3 A. The specified amount is \$4 million. The policy date is

4 December 31st, 2007.

5 MR. ABRAMOWITZ: We are moving on to another group of
6 witnesses, your Honor, if you want to take a break?

7 THE COURT: I am okay. Are you okay? Let's keep
8 going.

9 MR. ABRAMOWITZ: Defendants offer into evidence
10 Exhibit 202, 3060, 3061, 3062. This deals with Maria Ramos.

11 MR. FEINGOLD: No objection.

12 THE COURT: Admitted.

13 (Defendant Exhibits 202, 3060, 3061, 3062 received in
14 evidence)

15 MR. ABRAMOWITZ: Can we show 3060, please.

16 BY MR. ABRAMOWITZ:

17 Q. Can you just read the name on the application.

18 A. Maria E. Ramos.

19 Q. Can you read the amount of insurance applied for.

20 A. \$4 million.

21 Q. And the date of the insurance, the application would be at
22 Bates 89898.

23 A. May 30th, 2007.

24 Q. Could you look at the Bates No. 89897, and what was her
25 birth date listed?

DA2JBIN2

Juteau - direct

1 A. November 15th, 1932.

2 Q. Can we go to 3061, please. Can you go to 3061 with 3060,
3 please. Can you see the highlighted portion of 3061? Is that
4 the one in yellow?

5 A. \$4,650,000.

6 Q. As total assets?

7 A. That's correct.

8 Q. And on 3060, what is the total assets listed there?

9 A. \$5,250,000.

10 Q. Can we go to Defendant's Exhibit 3062 and read the
11 highlighted language.

12 A. Lifewriter notes for Policy No. ML5583366.

13 Q. Can we go to the Bates number Lincoln 091653 and read the
14 highlighted text.

15 A. IOLI, multiple applications exist for the insured. Review
16 case for possible non-recourse premium financing.

17 Q. Can we go to Exhibit 202, please. Can you read the
18 highlighted text.

19 A. Financial guidelines. Yes, the income should be reviewed
20 and compared to the illustrated premium, especially at the
21 older ages (70 plus) to be sure the premium is an acceptable
22 percentage to income.

23 As a general rule of thumb, the premium should not be
24 more than 25 percent of annual income.

25 Q. Can we show Government Exhibit 1940. It has already been

DA2JBIN2

Juteau - direct

1 admitted. That is a policy to Maria E. Ramos.

2 Can we go to the date, please.

3 A. The date is October 9th, 2007.

4 Q. Can we go to Bates No. 15856 and read what the planned
5 premium was.

6 A. \$190,640.00 annual.

7 Q. Looking at 3060 again, at Bates number 89893, what portion
8 of the income would be taken up by the premium?

9 A. Over 50 percent, up to 65 percent, it looks like.

10 MR. ABRAMOWITZ: Can we next go to another applicant,
11 Alma Lapp, Lincoln National, and we offer Defendants' Exhibits
12 3043, 3044, 3045, 3434, 3435.

13 MR. FEINGOLD: No objection.

14 THE COURT: Admitted.

15 (Defendant Exhibits 3043, 3044, 3045, 3434, 3435
16 received in evidence)

17 BY MR. ABRAMOWITZ:

18 Q. Can we show Exhibit 3435, please. Would you just read what
19 it says.

20 A. Applicant for life insurance Alma Ruth Lapp, date of birth
21 May 27th, 1932.

22 Q. Can we go to Page 36564, please, and what is the date of
23 the application?

24 A. June 12th, 2008.

25 Q. Can we go to 3043, please. Can you read the highlighted

DA2JBIN2

Juteau - direct

1 portions.

2 A. Financial supplement for business and personal insurance.

3 Proposed insured: Alma Lapp. Cash in banks, \$1,400,000. Real
4 estate/home, \$550,000, personal property, \$1 million.

5 Q. Can we go to 3044. Can we look at 3043, at Page 36760, and
6 36924 of Exhibit 3044.

7 What does the right side list as the real estate?

8 A. I think the second line is home -- sorry. Which side?

9 Q. Both sides.

10 A. On the left side, the value for home/real estate is
11 \$550,000. On the right side the right value for home is
12 \$400,000.

13 Q. On the left side, what is the list for liabilities?

14 A. Zero total liabilities.

15 Q. And on the right side what is the list for liabilities?

16 A. \$259,111.00.

17 Q. And on the left side what is the list for personal
18 property?

19 A. \$1 million.

20 Q. And on the right side what is the list for personal
21 property?

22 A. \$500,000.

23 Q. On the left side what is the list, the highlighted portion
24 for cash?

25 A. \$1,400,000.

DA2JBIN2

Juteau - direct

1 Q. And on the right side what is the listing for cash?

2 A. \$550,000.

3 Q. On the left side what is the listing for stocks and bonds?

4 A. Zero.

5 Q. And on the right side what is the listing for stocks and
6 bonds?

7 A. \$1,500,000.

8 Q. Can we go to Exhibit 3045, at Page 33698. Read the
9 highlighted portion.

10 A. IOLI detection. Owner state of residence is different from
11 the insured state of residence. Review case for possible
12 non-recourse premium financing.

13 Q. Can you go to Page 33699. Read the highlighted portion,
14 please.

15 A. Standard subject to outstanding IOLI question and annual
16 premium of \$100,700.00.

17 UW amount exceeds financial guidelines. Owner
18 relationship unacceptable, beneficiary relationship
19 unacceptable.

20 Q. Can you go to Page 33701, please. Read the highlighted
21 portion.

22 A. Also this is coming up as an IOLI ---will need to question
23 for premm financing.

24 Q. Can we go to Page 33705, please.

25 A. Agree okay for \$2.5 million. Would obtain the agent IOLI

DA2JBIN2

Juteau - direct

1 cert form.

2 Q. Can we go to Exhibit 3434. This is a National Life
3 Insurance policy. Can you read the name of the insured.

4 A. Alma Ruth Lapp.

5 Q. Can we go to Page 36528. What is the date of the policy?

6 A. August 11th, 2008.

7 Q. And the specified amount?

8 A. \$2.5 million.

9 Q. Can we go to Page 36529. What is the planned premium of
10 the policy?

11 A. \$101,225.00.

12 MR. ABRAMOWITZ: We are going to another applicant,
13 your Honor --

14 THE COURT: Yes.

15 MR. ABRAMOWITZ: -- Tomasa Contreras. We offer into
16 Exhibits 3083, 3084, 3085, 3086, 3088, 3146, 3149, 3153, 3159,
17 3160, 3161, 3162.

18 MR. FEINGOLD: No objection.

19 THE COURT: Admitted.

20 (Defendant Exhibits 3083, 3084, 3085, 3086, 3088,
21 3146, 3149, 3153, 3159, 3160, 3161, 3162 received in evidence)

22 MR. ABRAMOWITZ: Can we show Exhibit 3146, please.

23 BY MR. ABRAMOWITZ:

24 Q. Can you just read what this is.

25 A. Application for life insurance, the Lincoln National Life

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Juteau - direct

1 Insurance Company.

2 Q. Can you go to Page 43685. Can you read who the name of the
3 applicant is.

4 A. Tomasa Contreras.

5 Q. Can you go to Page 43692.

6 The date of the application?

7 A. August 26th, 2008.

8 Q. Can you go to Page 43686. Did we get the date first?
9 43685, please?

10 A. The date of birth is December 29th, 1934.

11 Q. Can we go to Page 43686, please. Can you please read
12 Question 37 and the answer.

13 A. Is this policy being funded via a premium financing loan or
14 with funds borrowed, advanced or paid from another person or
15 entity? The answer is yes.

16 Q. And then can you, the same page, look at the handwritten
17 note. What does that say?

18 A. 37. Ridge Capital. All appropriate documents to follow.

19 Q. Can we go to Exhibit 3086. This is Info-Link, and can you
20 read the highlighted portion.

21 A. Date of report, August 22, 2008. Name of applicant, Tomasa
22 Contreras.

23 Q. Can you go to Page 49186, please. Can you read what that
24 says.

25 A. No portion of the initial or future premiums for the

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Juteau - direct

1 proposed policy will be borrowed, loaned or otherwise financed.

2 Q. Now can we go to 3083, please. Can you read just the
3 highlighted portion. First on the upper left, can you read
4 what this is? "Automated underwriting," is that right?

5 A. That's correct.

6 Q. And then read the highlighted portions on the lower right?

7 A. Rider insured: Tomasa Contreras.

8 Q. Can you go to Page 42467, please. Can you read that.

9 A. We need to obtain the medical requirements, inspection
10 report, trust documents, premium financing forms to proceed.

11 Q. Can we go to 3088, please. Can you read the highlighted
12 portion?

13 A. August 29th, 2008, Tomasa Contreras. Program: Premium
14 financed with Ridge Capital.

15 Q. Can we go to Exhibit 3149. What is that?

16 A. That's another application with the Lincoln Financial Group
17 for life insurance by Tomasa Contreras.

18 Q. Can we go to Page 48826. Can you read the date of the
19 application?

20 A. October 10th, 2008.

21 Q. Can we go to Page 48820 and read Question 37.

22 A. Is this policy being funded via a premium financing loan or
23 with funds borrowed, advanced or paid from another person or
24 entity? Answer: Yes.

25 Q. Can we go to Exhibit 3159, at page 50823. Can you read the

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Juteau - direct

1 highlighted portion.

2 A. Insured and owner premium financing questionnaire.

3 Q. Can we go to the date.

4 A. October 10th, 2008.

5 Q. Can we go back to page 50823, and can you read Question No.
6 2 and the answer.

7 A. Please provide the name, address, and contact information
8 for the lender (or other person or entity who is providing the
9 funds to pay the premiums for this new life insurance policy.)

10 Name of lender. Ridge Capital flexible Premium
11 Finance Loan Program. Lender's address, 10 Churchill Finance,
12 LLC, 625 Margarett Avenue, 11 Floor, Minneapolis, Minnesota,
13 5549. Lenders contact person: Attention corporate trust
14 services. Telephone number --

15 Q. You don't have to read the telephone number. Can we go to
16 Exhibit 3084. Can you read the top.

17 A. From Rhonda Allen, sent Friday, October 24, 2008, 10:58 am,
18 to Lindsay Jones.

19 Q. And the subject?

20 A. The subject is Tomasa Contreras, Lincoln, Ridge Capital.

21 Q. Can you read the highlighted portion.

22 A. This is a premium financing deal for Ridge Capital, per
23 Lucy, this is to be grandfathered under the old rules for
24 premium financing per our previous exception that we received
25 last week.

DA2JBIN2

Juteau - direct

1 Q. Now can we go to Exhibit 3153, please. What is Exhibit
2 3153?

3 A. This is another application for life insurance to Lincoln
4 Financial Group from insured Tomasa Contreras.

5 Q. Can we go to page 48928. What is the date of the
6 application?

7 A. February 26th, 2009.

8 Q. Can we go to Page 48926. Please read Question No. 53 and
9 the answer.

10 A. Is this policy being funded via a premium financing loan or
11 with funds borrowed, advanced or paid from another person or
12 entity? Answer: No.

13 Q. Can we go to page 48929 and read Question 4 A and B and the
14 answers.

15 A. A. Is this policy being paid for with a premium financing
16 loan? Answer: No.

17 B. Is this policy being paid for with funds from any
18 person or entity whose only interest in the policy is the
19 potential for earnings based on the provision of funding for
20 the policy? Answer: No.

21 Q. Can you go to Exhibit 3161. Just read the highlighted
22 portion.

23 A. The Tomasa Contreras 2008 irrevocable trust.

24 Q. Go to Page 51259 and read the highlighted language.

25 A. The trustee shall have, with respect to any policy of life

DA2JBIN2

Juteau - direct

1 insurance at any time held as part of the trust estate, the
2 sole and exclusive right --

3 Q. Can you just finish the sentence.

4 A. -- sole and exclusive right exercisable by the trustee from
5 time to time and in his or her discretion.

6 Q. Can you read the highlighted portion.

7 A. To borrow upon the policy from the insurer or from any
8 other person for any purpose (including the payment of premiums
9 or other charges) and to pledge or hypothecate the policy for
10 any loan.

11 Q. Can we go back to 3159, please, at Page 5024. Can you read
12 the question and the highlighted answer.

13 A. Have you had any discussions about the eventual sale of
14 this new life insurance policy, including any indirect sale of
15 the trust, partnership, or any other entity that owns the
16 contract? The insured checked yes.

17 While there are no plans to sell this policy at this
18 time or in the future, we have discussed the secondary market.

19 Q. Can you go to Exhibit 3162, please, at Page 51345. Read
20 the highlighted title.

21 A. Required producer and representative certification
22 regarding the stranger originated life insurance.

23 Q. Can you go to Page 51346, please, and read the question and
24 answer.

25 A. Have you been involved in any discussion with the

DA2JBIN2

Juteau - direct

1 insured/annuitant and/or owner/applicant about the possible
2 sale or assignment of a beneficial interest in a trust, limited
3 liability company, or other entity created or to be created on
4 the insured annutnant's and/or owner/applicant's behalf?

5 Answer: No.

6 Q. Let's go back to Exhibit 3085, please, and read the note
7 there.

8 A. IOLI detection. Multiple applications exist for the
9 insured. Review case for possible non-recourse premium
10 financing.

11 Q. Can you go to Page 42459, please, and read the highlighted
12 language.

13 A. More than half of income is paying out premiums -- need
14 exit strategy.

15 Q. Can we go to Exhibit 3160, please, and this is -- who is
16 the insured on this policy?

17 A. Tomasa Contreras.

18 Q. Can we go to page 50939. What is the date of the policy?

19 A. February 27th, 2009.

20 Q. What is the face amount of the policy?

21 A. \$4 million.

22 Q. What is the planned premium?

23 A. \$36,480.00 quarterly.

24 MR. ABRAMOWITZ: Now go to the American General
25 documents for James Farrell. We offer Exhibits 3277, 3280,

DA2JBIN2

Juteau - direct

1 3281.

2 MR. FEINGOLD: No objection.

3 THE COURT: Admitted.

4 (Defendant Exhibits 3277, 3280 and 3281 received in
5 evidence)

6 THE COURT: Do you want to take a five-minute break,
7 folks? Let's take a five-minute break. Don't discuss the case
8 with anyone.

9 (Jury excused)

10 (Recess)

11 (Continued on next page)

DA2LBIN3

1 (Jury not present)

2 MR. ABRAMOWITZ: While the jury is out, we have some
3 documents to move into evidence.

4 MR. FISCHER: With the government's consent.

5 THE COURT: I'm sorry?

6 MR. ABRAMOWITZ: There are two more documents to be
7 introduced into evidence with the government's consent.

8 THE COURT: All right. Do so.

9 MR. FISCHER: The defense offers Defendant's Exhibit 1
10 and 2. DX1, DX2.

11 MR. FEINGOLD: No objection.

12 THE COURT: Admitted.

13 (Defendant's Exhibits 1, 2 received in evidence)

14 THE COURT: I'm down Jim. Is that why we're all
15 standing here because we don't have Jim? I'll find him.

16 MS. MURRAY: Your Honor, with the government's
17 consent, I'm also moving in three sets of medical records.

18 THE COURT: No, you're offering.

19 MS. MURRAY: I'm offering. I'm offering three sets of
20 medical records from policy files. And they are Defense
21 Exhibits 2016, 2019, and 2020.

22 MR. FEINGOLD: No objection.

23 THE COURT: Admitted.

24 (Defendant's Exhibits 2016, 2019 and 2020 received in
25 evidence)

DA2LBIN3

Juteau - direct

1 (Jury present)

2 THE COURT: Okay.

3 MR. ABRAMOWITZ: May I, your Honor?

4 THE COURT: You may continue.

5 And, of course, you're still sworn to read carefully
6 and accurately.

7 MR. ABRAMOWITZ: Sorry, I didn't hear you.

8 THE COURT: You may go.

9 MR. ABRAMOWITZ: Thank you.

10 Can we put up Defendant's Exhibit 3280, please.

11 BY MR. ABRAMOWITZ:

12 Q. And can you read the highlighted portion, Ms. Juteau,
13 please.

14 A. Part A, life insurance application. Name, James Farrell.
15 Age, 71. Personal income, \$407,000. Net worth, \$4,550,000.

16 Q. And can we go to the next page, please. How much insurance
17 is being applied for?

18 A. \$4 million.

19 Q. Now can we go to Defendant's Exhibit 3280, please. And
20 please read the line where it says net worth.

21 A. \$4,550,000.

22 Q. And can we go to Defendant's Exhibit 3277, please. And
23 what is the net worth listed there? 3277, page 29, excuse me.

24 A. \$1,330,000.

25 Q. And can we go to Exhibit 3280, please, 3280. What's the

DA2LBIN3

Juteau - direct

1 income -- I'm sorry. Can you read the income line?

2 A. \$407,000.

3 Q. And can we go to page 00028 and see what the total income
4 is listed there?

5 A. \$175,000.

6 Q. Can we go to 3281, please. And go to page 260 and read the
7 note.

8 A. Income, 175K; total assets, 1,570,000; LIAB, 240K; NW,
9 1,330,000.

10 Q. And can you read the next line.

11 A. IOLI answers no.

12 Q. Can you go to page 254, please. And can you read the
13 highlighted portion in blue.

14 A. Total income, \$407,500. Personal assets, \$4,750,000.
15 LIAB, 200,000. NW, \$4,550,000.

16 Q. And can we go to Government Exhibit 556. And that is the
17 policy -- was that the policy issued to Mr. Binday, is that
18 correct -- excuse me -- Mr. Farrell?

19 A. That's correct.

20 Q. Can you read the highlighted portion.

21 A. Insured, James Farrell. Initial specified amount,
22 \$4 million. August 23, 2007, date of issue.

23 MR. ABRAMOWITZ: And can we now go to another
24 applicant, Marilyn Nurik.

25 We offer into evidence Defendant's Exhibit 3047, 3048,

DA2LBIN3

Juteau - direct

1 3049, 3051, 3052. These are from Lincoln National.

2 MR. FEINGOLD: No objection.

3 THE COURT: Admitted.

4 (Defendant's Exhibits 3047, 3048, 3049, 3051, 3052
5 received in evidence)

6 MR. ABRAMOWITZ: Can we go to Exhibit 3048, please.

7 Q. Can you read the highlighted portions, please, Ms. Juteau.

8 A. The name of the applicant is Marilyn Nurik. Her date of
9 birth is February 24, 1925, and her annual unearned income is
10 200K plus.

11 Q. And can we go to Exhibit 3047, please, and go to
12 page 51677. What is the -- can you read the highlighted
13 portion.

14 A. Annual unearned investment income, \$250,000 plus.

15 Q. Can we go to 3042 -- 3052, please, at page 52028. And can
16 you read the highlighted portion.

17 A. September 18, 2008. Lincoln Benefit Life Company, re
18 Marilyn Nurik. She anticipates that this insurance will be
19 paid through current income. They may also liquidate assets
20 such as both personal and investment real estate to increase
21 this investment income. Mrs. Nurik did not pursue coverage
22 with that company and decided to apply to Lincoln benefit life.
23 Michael Binday.

24 Q. And can we go to 3151, please, at page 52036. Can you read
25 the highlighted portion, please.

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Juteau - direct

1 A. Financial supplement for business and personal insurance.

2 Proposed insured, Marilyn Nurik. Real estate value, zero.

3 Q. And can you look at 3051. Have you added the figures on
4 3051?

5 A. Yes, I have.

6 Q. And do they add up?

7 A. No, they do not.

8 Q. And what is the difference?

9 A. The figures add up to \$4 million. The total figure given
10 here is \$4,750,000.

11 MR. ABRAMOWITZ: We offer Defendant's Exhibit 235 into
12 evidence, which is the policy.

13 MR. FEINGOLD: No objection.

14 MR. ABRAMOWITZ: Can we show 235, please.

15 THE COURT: It's admitted.

16 (Defendant's Exhibit 235 received in evidence)

17 Q. Can you read the highlighted portion.

18 A. Group policyholder, Lincoln National Group life insurance
19 trust. Insured, Marilyn Nurik.

20 Q. And what's the face amount of the policy?

21 A. \$2,500,000.

22 Q. And can we go to page 484322. What is the amount of the
23 premium?

24 A. \$160,566 annual.

25 MR. ABRAMOWITZ: Can we go to another group of

DA2LBIN3

Juteau - direct

1 exhibits involving James Farrell again.

2 We offer into evidence 3303, 3301, 3302, 3436.

3 THE COURT: Any objection?

4 MR. FEINGOLD: No objection, your Honor.

5 THE COURT: Admitted.

6 (Defendant's Exhibits 3303, 3301, 3302, 3436 received
7 in evidence)

8 MR. ABRAMOWITZ: Can we show Defendant's Exhibit 3436,
9 please.

10 Q. And can you read the highlighted portion, please.

11 A. The name of the applicant is James Farrell.

12 Q. And can we go to page 1551, what's the date of the
13 application?

14 A. It's November 18, 2008.

15 Q. Can we go to Exhibit 3303 at page 189, and can you please
16 read the highlighted -- is there a highlighted portion? Okay
17 this is it.

18 Can you read the highlighted portion for real estate.

19 A. \$2 million.

20 Q. Can we go to Exhibit 3301, can you read the highlighted
21 portion.

22 A. Underwriting decision and issue instruction sheet.

23 Q. And can you go to page 53 or page 60, excuse me. Can you
24 read the highlighted text.

25 A. Zillow residence, 835K. If the trustee is not a known

DA2LBIN3

Juteau - direct

1 family member, let's re-review at that time. I will want to do
2 a full Google search. If the person comes up as an attorney,
3 I'll really want to stop, drop, and roll, and at that time
4 reconsider all financial requirements, etc.

5 Q. Can we go to page 57, please. Can you read the highlighted
6 portion, please?

7 A. Will want to pay special attention to nature of CPA and
8 trustee relationships.

9 Q. Can we go to page, excuse me, Exhibit 3302, and read the
10 highlighted portion. What is this?

11 A. This is an email from Maureen Tarr to Jessica Worman,
12 subject, re Farrell J.

13 Q. Can you go to page 136 of this exhibit, please, and please
14 read the highlighted portion.

15 A. I note the insured lives and works in New York. Please
16 advise circumstances surrounding the application taken in New
17 Jersey.

18 Q. Can you please go to 135, page 135, and read the
19 highlighted portion.

20 A. The client has a New Jersey attorney and anticipates
21 getting a New Jersey trust.

22 Q. Can you go to Exhibit 3301, at page 62, and read that
23 highlighted text.

24 A. Although I do not find language that indicates a
25 relationship to the secondary market, the trust is a bit

DA2LBIN3

Juteau - direct

1 sparse. Is this case a premium financed case?

2 Q. And can we go to page 63, please, and read the highlighted
3 text.

4 A. The amount of shopping still is a concern to me. The trust
5 seems vague, and the trustee is a little atypical. I am still
6 somewhat uncomfortable with this case and would use a very
7 specific amendment in relation to the total line.

8 Q. And can we show Exhibit 535, Government Exhibit 535. And
9 what is that?

10 A. That's a policy from Sun Life Assurance Company of Canada
11 issued to James Farrell.

12 Q. And what's the date of the policy?

13 A. December 28, 2008.

14 Q. Face amount of the policy?

15 A. \$3 million.

16 Q. And the premium, the annual planned premium?

17 A. \$113,490.

18 Q. Excuse me, it's a periodic premium.

19 MR. ABRAMOWITZ: May I have a minute, your Honor.

20 THE COURT: You may.

21 MR. ABRAMOWITZ: We have no further questions.

22 THE COURT: Anybody else from the back table?

23 From the government?

24 MR. FEINGOLD: No, your Honor.

25 THE COURT: Thank you, ma'am. You may step down.

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Juteau - direct

1 (Witness excused)

2 THE COURT: Okay. What else from the back table?

3 MR. STAVIS: All of the documents were submitted on
4 behalf of all the defendants, and even ones we had admitted
5 were covered in Mr. Abramowitz's presentation.

6 THE COURT: Fine.

7 Mr. Abramowitz.

8 MR. ABRAMOWITZ: We rest.

9 THE COURT: Mr. Stavis.

10 MR. ABRAMOWITZ: On behalf of Mr. Kergil, the defense
11 rests, your Honor.

12 MS. MURRAY: Your Honor, a brief side bar.

13 (Continued on next page)

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DA2LBIN3

1 (At the side bar)

2 THE COURT: You never did get a final ruling.

3 MS. MURRAY: That's correct.

4 THE COURT: Ms. Murray would like a final ruling on
5 her application.

6 Does the government have anything?

7 MR. FEINGOLD: We don't have anything further, your
8 Honor.

9 THE COURT: Okay. Fine. I'm prepared to let in the
10 little financial box.

11 MS. MURRAY: Your Honor, I would ask that it be -- I
12 highlighted a different one, but it would include that whole
13 section just to explain.

14 THE COURT: That's fine. I'm admitting it's page 7 of
15 the 10-Q.

16 Is it a Q or a K?

17 MS. MURRAY: It's a K.

18 THE COURT: Okay. Of the 10-K on actually from the
19 word individual markets-life insurance down to the bottom of
20 the page. Okay.

21 MS. MURRAY: Your Honor, may I publish it to the jury
22 on my case then?

23 THE COURT: You may. Yes.

24 MS. MURRAY: Okay. Thank you.

25 MR. ABRAMOWITZ: Thank you, your Honor.

DA2LBIN3

1 (In open court)

2 THE COURT: All right. The document is admitted.

3 (Defendant's Exhibit 2023, redacted received in
4 evidence)

5 THE COURT: Ladies and gentlemen, this is actually a
6 document where I have to explain something. A portion of a
7 page is being admitted. And we're going to make a photocopy
8 that will white out the top portion of the page and the bottom
9 portion of the page is being admitted. That's called
10 redaction. Don't worry about what it is we whited out. It's
11 not something that's relevant to the case. So nobody is trying
12 to pull the wool over your eyes or anything like that. I just
13 want to assure you of that.

14 Ms. Murray.

15 MS. MURRAY: Your Honor, may I include the first page?

16 THE COURT: It's Defendant's Exhibit what?

17 MS. MURRAY: Defendant's Exhibit 2023.

18 THE COURT: Thank you.

19 MS. MURRAY: Your Honor, may I include the first page
20 of the form 10-K?

21 THE COURT: You may.

22 MS. MURRAY: Put the Elmo on, please.

23 This is form 10-K, 2007, Lincoln National Corporation.
24 And the portion that's going into evidence is on page 7.

25 And may I read it, your Honor?

DA2LBIN3

1 THE COURT: You may.

2 MS. MURRAY: Products. The life insurance segment
3 sells primarily interest/market sensitive products (UL and VUL)
4 as term products.

5 The segment sales (in millions) were as follows:
6 Universal life, total universal life for the year 2007 was
7 637 million. Total universal life sales for 2006 were
8 467 million. And total sales for universal life in 2005 were
9 226 million.

10 And with that, Mr. Resnick rests, your Honor.

11 THE COURT: Okay. Now, the government has a rebuttal
12 case, I believe; is that correct?

13 MR. FEINGOLD: Yes, your Honor. Can we have a brief
14 side bar? I think it might help for scheduling purposes.

15 THE COURT: Do you want to do it after lunch? What I
16 would like to do is send the jurors to lunch and we can talk
17 about the scheduling. It can happen after lunch.

18 MR. FEINGOLD: I think your Honor may appreciate if we
19 have a brief side bar.

20 THE COURT: Apparently, I'm supposed to have a side
21 bar.

22 (Continued on next page)
23
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DA2LBIN3

1 (At the side bar)

2 MR. FEINGOLD: We're going to put in a handful of
3 documents that have not been admitted in our rebuttal case.
4 We're not planning on publishing any of them to the jury.

5 THE COURT: That's it, you're not calling any
6 witnesses?

7 MR. FEINGOLD: We're not calling any witnesses. Just
8 putting in documents. We're not publishing.

9 THE COURT: Let's do it, get it done.

10 MS. McCALLUM: We're just collecting the last of them
11 and the defense counsel needs to review them.

12 THE COURT: That's the problem. I have to send them
13 to lunch and then send them home in five minutes. I'll warn
14 them in advance okay.

15 MR. ABRAMOWITZ: No, no, no.

16 THE DEPUTY CLERK: How long will it take?

17 MR. ABRAMOWITZ: I haven't seen them, but I'm told I
18 shouldn't be worried about them.

19 THE COURT: It's not controversial. You have to look
20 at them.

21 MR. ABRAMOWITZ: They said that before.

22 MR. FEINGOLD: Have we been wrong?

23 THE COURT: You have to.

24 MR. ABRAMOWITZ: I don't want to have the jury come
25 back and send them home.

DA2LBIN3

1 THE COURT: We're going to have to because I have a
2 1 o'clock lunch meeting so I actually have to take lunch at
3 1 o'clock. I can't keep them here for half an hour or 40
4 minutes because I can't be here. I can't be here.

5 MR. ABRAMOWITZ: I think they're saying to me it's not
6 going to take me that long.

7 THE COURT: Really?

8 MS. McCALLUM: It really isn't.

9 (In open court)

10 THE COURT: We're going to try this, okay. We're
11 going to try this. I told you the government has a rebuttal
12 case. It turns out overnight it's thought about that and its
13 rebuttal case is simply going to be documents and it's not even
14 going to read them to you. So the rest of the evidence is
15 going to come in in about a five-minute thing. If you run into
16 the jury room, don't discuss the case and keep an open mind, I
17 think we can do this before the lunch hour. Then I can dismiss
18 you for the day because I have two hours' worth of stuff to do
19 with them on the charge. Okay.

20 (Jury not present)

21 THE COURT: Start looking people. Start looking.

22 (Pause)

23 THE COURT: How are we doing?

24 MS. McCALLUM: Almost done, your Honor.

25 MR. ABRAMOWITZ: I have to put on the record what I

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1 told Mr. Feingold, that they are indeed relatively
2 uncontroversial.

3 THE COURT: That's wonderful news.

4 MR. ABRAMOWITZ: For a change.

5 THE COURT: I'm sure you'll make them controversial
6 eventually. That's what closings are for.

7 (Pause)

8 THE COURT: We're running out of time.

9 MR. FEINGOLD: Your Honor, I think we're ready to
10 offer.

11 THE COURT: Let's bring the jurors in, please.

12 (Jury present)

13 THE COURT: Okay. Does the government wish to put in
14 a rebuttal case?

15 MR. FEINGOLD: Thank you, your Honor.

16 At this time the government offers Government Exhibits
17 9000, 9001, 9002, 9003, 9004, 9005, 9006, 9007, 9008, 9009,
18 Government Exhibits 9100, and 9101, Government Exhibit 9300,
19 9301, 9302, 9303, Government Exhibits 9400, 9401, 9402, and
20 9403, Government Exhibits 9500, 9501, 9502, 9503, 9504, 9505,
21 9506, Government Exhibit 9600, Government Exhibit 9700, and
22 Government Exhibit 9701.

23 And the government rests, your Honor.

24 MR. FISCHER: No objection, your Honor.

25 THE COURT: They were supposed to say that in reverse

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1 order but that's okay. They're admitted without objection.

2 (Government's Exhibits 9000, 9001, 9002, 9003, 9004,
3 9005, 9006, 9007, 9008, 9009, 9100, 9101, 9300, 9301, 9302,
4 9303, 9400, 9401, 9402, 9403, 9500, 9501, 9502, 9503, 9504,
5 9505, 9506, 9600, 9700, 9701 received in evidence)

6 THE COURT: The government has rested. Okay. So
7 everyone has rested. All the evidence is in. I have given the
8 parties a draft charge which they will read over lunch and then
9 they will come and we will duke it out over the charge and
10 we'll decide what I'm going to say to you. It would obviously
11 not be fair if the lawyers didn't know what the charge was
12 going to say before they closed. It would be hard for them to
13 tailor their remarks to what has to be discussed, which is what
14 the government has to prove and whether the government has in
15 fact managed to prove beyond a reasonable doubt that the
16 presumption of innocence is wrong. And you're going to hear a
17 lot about that tomorrow and the summations may spill over into
18 Monday. I don't know. It depends on how long they go. I know
19 there's really only so much that you can digest in a single
20 day.

21 You going to work very hard tomorrow just listening,
22 but you're going to work very, very hard. So get a good
23 night's sleep tonight, all right. Come here rested and ready
24 to go. They're picking a jury in some other case and that's
25 why there are all these people here and they have a big

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1 overcall, they have a lot of extra people, even more than we
2 had. So that's why the lines are so long.

3 If you have a problem getting in tomorrow, call Jim,
4 call Mariela, my deputy, we'll come down. We'll pull you off
5 the line, we'll get you into the building. I'd like for the
6 government to start its summation at 10 o'clock. So I'd like
7 all of us to be here at 10 o'clock ready to go.

8 Don't discuss the case tonight. Don't think about the
9 case tonight. Keep an open mind. But please, please get some
10 good rest because you're going to have to concentrate very hard
11 tomorrow. All right. I'll see you then.

12 (Jury not present)

13 THE COURT: Folks, you all have draft charges. I will
14 see you at 2:30.

15 MR. FEINGOLD: 2:30.

16 (Luncheon recess)

17 (Continued on next page)

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Trial

1 AFTERNOON SESSION

2 2:30 pm

3 (Trial resumes)

4 (In open court; jury not present)

5 THE CLERK: Come to order, please. Case on trial
6 continued, the government and defendants are present. The
7 jurors are not present.

8 THE COURT: They've given you back your case. They've
9 sent away your posse. We are where we began.

10 MS. McCALLUM: That's right.

11 THE COURT: Okay. Here is here I would like to do a
12 charge conference. Obviously you're proposed charges,
13 including the supplemental defense charges, proposals are a
14 part of the record. I have considered everything. I have come
15 up with a charge.

16 I would like to go through it first with the
17 government, then Mr. Binday, Mr. Kergil, and then Mr. Resnick,
18 for your suggestions, your questions, et cetera, and put all
19 the other things that I am not going to charge on the record at
20 the end, and then we'll done.

21 The McMahon rule on charges is fewer words are better,
22 which is why I cut so much repetition, redundancy and excessive
23 verbiage out of charges that seem like to grow like --

24 MR. STAVIS: We met over the lunch break. I would for
25 the most part -- I shouldn't say that -- I would join in

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Trial

1 counsel for Binday's comments, additions, objections.

2 THE COURT: We'll get there and you can join.

3 MR. STAVIS: If I need to supplement those, I will.

4 THE COURT: That is great. Ms. McCallum has to go
5 first, and please be patient.

6 MS. McCALLUM: Your Honor, the first page that we have
7 any comments on is 11, the use of evidence obtained pursuant to
8 search. I don't think there was any evidence introduced.

9 THE COURT: I don't think there was, either. I don't
10 know how that got in here. Out!

11 MR. FISCHER: No objection.

12 MS. McCALLUM: The next page is 17, expert testimony.

13 THE COURT: Again Jim had a big question mark. You
14 can see it is highlighted. I said what expert?

15 MS. McCALLUM: And then the government, the first
16 substantive suggestion is on Page 30, and I circulated over the
17 lunch hour to your Deputy Clerk and to the defense a
18 proposed --

19 THE COURT: By the way, Jim is my senior law clerk.
20 He is actually my law clerk. My deputy is Mariela DeJesus, who
21 is never in the courtroom.

22 MS. McCALLUM: -- to Mr. O'Neill.

23 THE COURT: He has seen it. I haven't.

24 MS. McCALLUM: I circulated by e-mail.

25 THE CLERK: I did not see it. I was out.

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Trial

1 MS. McCALLUM: I have one copy remaining, but I can
2 hand it up to the court.

3 THE COURT: You keep your copy. We'll print it out.

4 MS. McCALLUM: It is a revision to the middle two
5 paragraphs of that charge.

6 THE COURT: Okay. Jim, if you send me the e-mail, I
7 will open it and I will have it.

8 THE CLERK: I will do both, okay? Printing. I have
9 to send it to you because I have to change the ink.

10 (Pause)

11 THE COURT: Just talk to me. It is not coming up --
12 now it just came up. It just came up. Now I am reading what
13 you -- yes, I'm cool with that.

14 MS. McCALLUM: If the court would like me to explain
15 what the changes were, I am happy to do that. They were to
16 clarify things.

17 THE COURT: You added a sentence which is a good
18 sentence.

19 MS. McCALLUM: And take out the words "tangible" as
20 well and I can explain why that is.

21 THE COURT: Okay. Take out the word "however,"
22 because we don't need a "however" in the second sentence.

23 MS. McCALLUM: Yes.

24 THE COURT: All right.

25 MS. McCALLUM: This is just with reference to a Second

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Trial

1 Circuit case United States versus Carlo from 2007.

2 THE COURT: Cite?

3 MS. McCALLUM: The cite is 507 F.3d 799, and the pin
4 site is 801 to 802.

5 THE COURT: Thank you.

6 MS. McCALLUM: I can read the relevant passage.

7 THE COURT: Please.

8 MS. McCALLUM: "While the interests protected by the
9 mail and wire fraud statutes do not generally extend to
10 intangible rights except as modified by 18 U.S.C. 1346, they do
11 extend to all kinds of property rights, both tangible and
12 intangible."

13 So that is why the word "tangible" --

14 THE COURT: That is a probably pretty good change.

15 MR. FISCHER: Your Honor --

16 THE COURT: You will have a minute to respond, okay?

17 Please, please let me run my own charge conference,
18 please! I have never, ever not allowed the defense to respond
19 to anything the government has said. It has never happened.
20 Never happened!

21 So that is the change you propose?

22 MS. McCALLUM: Those two paragraphs, yes, those as
23 amended. Then the only other comment the government has is on
24 Page 50, the similar acts evidence. Again Mr. O'Neill
25 highlighted I believe so we are all on the same page. I think

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Trial

1 there is no similar act evidence.

2 THE COURT: So that goes out.

3 Now, do you want to address what the government's one
4 proposed change first and then you can go through with your
5 own?

6 MR. FISCHER: Why don't I do that, your Honor. I
7 think that makes sense.

8 THE COURT: Fine.

9 MR. FISCHER: To get into the tangible economic harm
10 point, the court already obviously spent a tremendous amount of
11 time on this issue in the motion in limine.

12 THE COURT: I didn't use the word, "tangible."

13 MR. FISCHER: You did, your Honor.

14 THE COURT: Well, that was a mistake. I didn't read
15 Carlo. I don't understand what "tangible" is.

16 MR. FISCHER: It was in the motion in limine. We
17 opened on it for sure.

18 THE COURT: Then you will have an issue on appeal if
19 you have to go up, won't you?

20 MR. FISCHER: The motion in limine says the government
21 intends to rely on a right to control theory. It must prove
22 the insurers would have suffered some sort of tangible economic
23 harm. We think what that dovetails with is the Skilling case,
24 among the other cases that go directly into this analysis.

25 THE COURT: Give me the Carlo case, please.

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Trial

1 507 F.3d 799. I think that was a direct quote from
2 Steele. I know what Skilling is. Skilling is a right to
3 honest services case, okay? I know what Skilling is. There is
4 no more right to honest services.

5 MR. ABRAMOWITZ: There is other language in there
6 about tangible versus intangible in Skilling.

7 THE COURT: That is fine.

8 MR. ABRAMOWITZ: That is after the --

9 THE COURT: The holding in Skilling is about the
10 holding, not the dictum, but the holding in Skilling abolished
11 this concept of the right to honest services. That is what
12 Skilling was. It said that was not an economic injury.

13 I have been struggling with this word "tangible"
14 because I don't understand what it means. I know what it
15 doesn't mean. It doesn't mean loss on the bottom line.

16 I would like to read the Carlo case with which I am
17 not familiar.

18 MR. FISCHER: Your Honor, look, we agree that the
19 charge cite to be broader than harm on the bottom line. We
20 think the charge does a nice job of explaining to the jury
21 exactly what tangible harm means.

22 THE COURT: It doesn't. It just says here is what it
23 is not. I may include the paragraph from Carlo and then I'll
24 know I am doing exactly what the Second Circuit says is okay.

25 MR. FISCHER: We would like an opportunity to review

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Trial

1 that case, your Honor.

2 THE CLERK: I am printing it.

3 (Pause)

4 THE COURT: It is a per curiam so it is not
5 particularly long. It seems to be argued in the circuit by
6 Judge Failla.

7 (Pause)

8 MR. FISCHER: All right, your Honor, I just had a
9 moment to look at the 2007 Carlo case. Our position, your
10 Honor, is a couple of points:

11 First, I think the court, when it was presented with
12 these arguments at length by the parties in motion in limine,
13 were focusing on what the harms can be in this case and tying
14 them back into the indictment, properly found that this was a
15 case or could be a case about the economic harm in the
16 indictment which was tangible economic harm. So it is not in a
17 vacuum.

18 THE COURT: The word "tangible" doesn't appear in the
19 indictment.

20 MR. FISCHER: It is a conclusion the court drew --

21 THE COURT: Guess what? It was loose language. Loose
22 lips sink ships. I take the blame. Had I read the Supreme
23 Court's decision in Carpenter, I would have known that the
24 interest protected by the mail and wire fraud statutes extend
25 to all kinds of property interests, both tangible and

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Trial

1 intangible.

2 I now have an opportunity to correct an error of law
3 that I made by using loose language when I was trying to parse
4 through -- please don't stand up. One at a time -- when I was
5 trying to parse through a whole bunch of cases that were being
6 cited to me, notably Shellef, whichever I was citing for
7 dictum. I actually didn't get the law wrong. I actually
8 didn't get the law wrong.

9 What I did was exactly what you wanted. You wanted me
10 to say that there had to be economic harm, and there does. I
11 said that. I haven't changed my mind about that. It
12 doesn't -- economic harm? The government is going to argue
13 there was economic harm. The government is going to argue
14 there was economic harm because your clients received
15 commissions. The government is going to argue there was
16 economic harm because it is going to have to pay out on
17 policies because it is underwriting guidelines were wrong and
18 it made incorrect assumptions. Those are all economic harms,
19 and they're real money harms, okay?

20 You wanted me to say, you wanted me to say that if
21 they didn't lose money on the bottom line on these policies,
22 there was no economic harm. That I did not say, and that was
23 an absolutely correct statement of the law.

24 But I did say in your favor that the government had to
25 prove real economic harm, real economic harm which, by the way,

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Trial

1 is what I think tangible economic harm is, real economic harm,
2 real economic harm.

3 MR. FISCHER: We can take, "real." We'll take,
4 "real."

5 THE COURT: Fine. "Real" is fine, but real economic
6 harm can be, according to Carpenter, tangible or intangible.

7 They're not arguing intangible economic harm. They're
8 not trying to prove intangible economic harm. They're arguing
9 there is real monetary, a real fiscal consequence. It is not
10 just the psychic knowledge that you don't have control over
11 your money.

12 MR. STAVIS: It is theory.

13 THE COURT: That is not the government's theory.

14 MR. STAVIS: Not the government's theory?

15 The government is arguing a theory of the insurance
16 companies, that is why we are asking for real economic harm.
17 It is a theory. You can't say the policies are going to lapse,
18 not lapse. The potential for lapsing is less, this, that and
19 the other thing. These are insurance company theories of how
20 they're harmed. That is why it is so important to get this
21 language correct.

22 MR. FISCHER: That is the government's position.

23 THE COURT: Ms. McCallum.

24 MS. McCALLUM: Your Honor, I think you have in here
25 language economic harm. That captures the law, it captures our

DA2JBIN4

Trial

1 argument, it captures any defenses that have been presented. I
2 think inserting the word "real" or "tangible" is unnecessary,
3 potentially confusing and not actually in line with Carlo,
4 tangible at least.

5 Your Honor, I would just also add, I don't know what
6 it would mean to have real versus what exactly, real versus
7 unreal economic harm. I think that is just raises a prospect
8 of confusion in the jurors' minds.

9 MR. ABRAMOWITZ: But then Ms. McCallum adds this
10 language which takes it right, says it need not be
11 quantifiable. It is not real if it is not quantifiable. So
12 you should take that language out and then leave real --

13 THE COURT: I am happy to take that language out
14 because my original language is not limited to loss on a
15 company's bottom line.

16 MR. ABRAMOWITZ: That is fine.

17 THE COURT: Okay. What else?

18 MR. FISCHER: One more, a minor point. After the
19 right to control money or property and Ms. McCallum's
20 insertion, I would add "can constitute," rather than
21 "constitute."

22 THE COURT: In considering whether loss was
23 contemplated, keep in mind that loss, the right to control
24 money or property constitutes deprivation of money or property
25 only when the scheme, if it were to succeed, would result in --

DA2JBIN4

Trial

1 I see no need to change that at all. The word "can" is
2 unnecessary.

3 All right. Now, I assume the defense has a whole lot
4 more things they want to talk about in the charge.

5 MR. FISCHER: I wouldn't say a whole lot, your Honor.

6 THE COURT: But some?

7 MR. FISCHER: A couple of things.

8 THE COURT: Talk to me.

9 MR. FISCHER: They're mostly also focused on Page 30,
10 on Page 30, your Honor, in the third full paragraph.

11 THE COURT: There is one more -- oh, I caution you,
12 yes?

13 MR. FISCHER: "I caution you about one thing."

14 I think, your Honor, that is a good place to put the
15 following language which I will suggest basically tracks the
16 language of the indictment and gets in some of the issues we
17 were getting into on the motion in limine, and I will read it
18 to you what my suggestion is.

19 The insurance companies -- I want to make sure I am
20 reading the right thing. Right before I caution you, "In order
21 for the government to establish its burden of proving a scheme
22 to defraud, it must prove beyond a reasonable doubt that the
23 defendants' conduct resulted in a discrepancy between the
24 benefits the insurance companies expected and those they
25 actually" --

DA2JBIN4

Trial

1 THE COURT: No, that is not the theory they're
2 pursuing. I said why aren't you pursuing the Steele theory? I
3 now know the answer to that question. You guys showed me the
4 answer to that question. That is why they're not pursuing that
5 theory, all right?

6 In the motion in limine, I said I don't know why the
7 government isn't pursuing this theory because I thought that's
8 the theory that they were going to pursue, that they didn't
9 know what they were getting.

10 They thought they were insuring young, healthy,
11 vigorous old people who would pay their own premiums, and
12 instead they ended up insuring old, unhealthy -- although I
13 point out everybody who testified is alive. It turned out they
14 were pretty healthy after all -- old, unhealthy people who
15 couldn't afford to pay their own premiums. That, it turns out,
16 is not the way the government has chosen to present the case.

17 After seeing the defense case, I understand why.

18 MR. FISCHER: Your Honor --

19 MS. McCALLUM: I think the government is continuing to
20 pursue that theory of the discrepancy between the benefits --
21 part of the right to control theory, but again it is not the
22 only theory we are pursuing. We are pursuing the deprivation
23 of --

24 THE COURT: In that case, I am really looking for
25 forward to tomorrow.

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Trial

1 MR. ABRAMOWITZ: We need to know the language, though.

2 MR. FISCHER: That is the language I would propose
3 including, your Honor, because it tracks the indictment in this
4 case. It is really pulled from the indictment.

5 THE COURT: It is not going to be included. Your
6 objection is sustained.

7 MR. FISCHER: We may get into that constructive
8 amendment problem, your Honor?

9 THE COURT: I hear you. You can go up on it. I lost
10 on D'Amato on that. I think I'm okay here.

11 MR. FISCHER: I think the government's position is
12 their right to control is a subset of that anyway. That is
13 why --

14 THE COURT: If that turns out to be the government's
15 position, we may have to revisit this before you close, after
16 you hear the government's summation.

17 MR. ABRAMOWITZ: Your Honor, I think we may be making
18 a mountain out of a molehill. I think the issue is the
19 language about the benefits expected versus the benefits
20 received, contemplated. It is precise language from the
21 indictment and the motion in limine and I really don't think it
22 is objectionable.

23 THE COURT: This is why I am never going to decide
24 another motion in limine. I am never going to decide another
25 motion in limine. I will deny without prejudice to renew

DA2JBIN4

Trial

1 sometime during the trial when I have real evidence in front of
2 me.

3 MS. McCALLUM: May we confer for a moment?

4 THE COURT: Sure. Be my guest.

5 (Off-the-record discussion)

6 THE COURT: The government's new proposal for Page 30
7 is Court Exhibit 1.

8 (Court Exhibit No. 1 received in evidence)

9 MR. ABRAMOWITZ: Your Honor, I think we can agree on
10 language here.

11 THE COURT: Great! I am certainly not going to fight
12 the agreed-upon language.

13 (Off-the-record discussion)

14 MS. McCALLUM: Your Honor, if we could actually just
15 return to this point later this afternoon.

16 THE COURT: Sure. I am very happy to return to this
17 point later this afternoon. Let's see what else the defense
18 has.

19 MR. FISCHER: Moving on. At the end of the next
20 paragraph, the paragraph starts there is one more thing.

21 THE COURT: "Probed more deeply"?

22 MR. FISCHER: Sorry.

23 THE COURT: The last words of the next paragraph are,
24 "probed more deeply"?

25 MR. FISCHER: We suggest the following language.

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Trial

1 But if you find that the government has not proved
2 beyond a reasonable doubt that the insurance companies were
3 deceived, they could not have been victims of a scheme to
4 defraud. The insurance companies would not have been deceived
5 if you conclude they were aware of the misrepresentations or
6 turned a blind eye toward them.

7 THE COURT: Ms. McCallum.

8 MS. McCALLUM: The government would object to the
9 insertion of that language, your Honor, for a number of
10 reasons. The first is that as the charge properly lays out,
11 reliance is not an element of the crimes charged.

12 THE COURT: It is not, indeed. Materiality is only
13 "could influence."

14 MS. McCALLUM: Yes.

15 THE COURT: I am familiar with the D'Amato case, very
16 familiar with the D'Amato case.

17 MS. McCALLUM: Those are the reasons why the
18 government would object to the insertion of that language.

19 MR. FISCHER: It is not just D'Amato. It is Russo and
20 other cases, and there is language, I could go on the court's
21 decision on the motion in limine. It is taken from the case.
22 If the insurers were not deceived, they could not have been
23 victims of a scheme to defraud.

24 Russo, if you find the government has failed to prove
25 beyond a reasonable doubt that the victim was deceived, you may

DA2JBIN4

Trial

1 not convict on the conspiracy charge based on the alleged
2 scheme to defraud. That is what we are asking for. If we want
3 the Russo charge, we can take something along those lines.
4 That is literally what we are asking for.

5 (Continued on next page)

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Trial

1 MS. McCALLUM: Your Honor, both Russo and D'Amato are
2 about intent to defraud. They're about that element, and it's
3 about the defendants' states of mind. And the issue in both --

4 THE COURT: Certainly D'Amato is about intent to
5 defraud because the issue was whether Mr. D'Amato could have
6 had the intent to defraud when he knew that the people in the
7 company knew everything that was going on.

8 Now, here we have a case where unlike D'Amato -- I'm
9 remembering back a long way and, of course, our firm wasn't
10 involved in it until appeal -- I can't remember whether
11 Mr. D'Amato testified or did not testify in that case.
12 Mr. Abramowitz might.

13 MR. ABRAMOWITZ: I don't remember, your Honor.

14 THE COURT: But somehow the record contained
15 information about what Mr. D'Amato himself knew about what was
16 going on at the victim company. Not sure I've heard any
17 evidence about what Mr. Binday or Mr. Kergil or Mr. Resnick
18 knew about what was going on at the insurance companies. Very,
19 very different set of circumstances.

20 MR. FISCHER: But your Honor, putting even D'Amato
21 aside, the Russo case has that charge not on the intent issue,
22 but on the scheme to defraud. Could there have been a scheme
23 to defraud if the so-called victim --

24 THE COURT: Can you give me Russo, please. What's the
25 cite?

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Trial

1 MR. FISCHER: 74 F.3d 1383.

2 THE COURT: Lot of loose language in the Second
3 Circuit.

4 MR. ABRAMOWITZ: It bears back on the intent, your
5 Honor. If --

6 THE COURT: Can I read it first before we talk about
7 it.

8 MR. ABRAMOWITZ: Sure.

9 THE COURT: Thank you.

10 THE DEPUTY CLERK: That cite, the cite again?

11 THE COURT: 74.

12 MR. FISCHER: 74, your Honor.

13 THE COURT: F.3d.

14 MR. FISCHER: 1383.

15 (Pause)

16 THE COURT: Do you have a jump cite on it?

17 MR. FISCHER: 139293, your Honor. Roman numeral --

18 THE COURT: Roman numeral II. I know where it is.

19 MR. FISCHER: You got it.

20 THE COURT: Well, of course, all the circuit did was
21 say the defendant's argument before us, which is that their
22 proposed instructions should have been given to the jury rather
23 than the one the district court gave -- and it's the reasonable
24 doubt instruction that you quote is from the district court's
25 instruction. All the circuit said is, no, the defense wasn't

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Trial

1 entitled to its own -- to the charge that it wanted. The
2 charge it wanted would be misleading.

3 MR. FISCHER: What we wanted was the district court
4 instruction.

5 THE COURT: But the circuit never opined on the
6 propriety of the district court charge except to say the
7 defense charge was inappropriate.

8 MR. FISCHER: But in that case, your Honor, the theory
9 of the defense was exactly the same as the theory of the
10 defense in this case that if the victim of a fraud, the
11 so-called purported victim of a fraud isn't deceived, then
12 there is no fraud. There can be not a fraud. Putting aside
13 the state of mind, putting aside reliance, we're not even
14 talking about reliance, which was the point of the underwriting
15 exercise that we went through and consistent with --

16 THE COURT: That's true if fraud is what is charged,
17 but we've got a scheme to defraud charged here. Scheme to
18 defraud, a scheme doesn't have to succeed. If the scheme
19 doesn't have to succeed, that means the victim doesn't have to
20 be deceived.

21 MR. ABRAMOWITZ: That's true of any mail fraud,
22 there's a scheme to defraud. That's the charge given.

23 This is the heart of the defense. When there is no
24 deception, there is no scheme. And there's no contemplated
25 scheme if the victim knows that it's not a lie. It's as simple

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Trial

1 as that. And that was the charge given in that case and it's
2 been given in other cases as well.

3 MS. McCALLUM: Your Honor, this case -- it's not even
4 clear what count this was on. Russo was a case that charged
5 manipulative and deceptive devices as well under the 10b-5. I
6 think the law is absolutely clear that reliance, first of
7 all --

8 THE COURT: Sand is absolutely clear.

9 MR. FISCHER: It's not reliance, your Honor. It
10 cannot be reliance without saying reliance.

11 THE COURT: But Sand does not have this language in
12 his charge. It's not there. I looked for it.

13 MR. FISCHER: But, your Honor, this is relevant to the
14 specific defense theory in this case and has been given in
15 other cases where similar defendants have made similar defense
16 theories. And it's your Honor's motion in limine about exactly
17 what we could do and why it's relevant.

18 MR. ABRAMOWITZ: It's not reliance, your Honor. It's
19 knowledge.

20 THE COURT: I know it's not reliance.

21 MR. ABRAMOWITZ: It's the knowledge -- there can't be
22 a victim.

23 THE COURT: It's not a knowledge crime. This is an
24 intent crime, not a knowledge crime.

25 MR. ABRAMOWITZ: It's an intent crime and the argument

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1 is they knew it. And if they knew it, there could not have
2 been a false statement and, by inference, no intent.

3 MS. McCALLUM: Your Honor, that's just not the law.

4 THE COURT: That's not the law of intent. That's not
5 the law of intent.

6 MR. ABRAMOWITZ: But it's the law of the question
7 whether there's a victim, your Honor. You cannot have a lie if
8 the person is not deceived, a material lie.

9 MS. McCALLUM: Your Honor, materiality is a different
10 question. And materiality is what the defense has been
11 essentially in the underwriting files that were presented.
12 That is a different question, and it's not about whether or not
13 somebody was deceived. Materiality is a --

14 THE COURT: That is absolutely true. That is true.

15 MR. FISCHER: It's not just materiality, your Honor.
16 It goes to whether they knew exactly what it is that they were
17 getting. If they weren't deceived, then there's no victim in
18 this case and then there could not have been a fraud. It's
19 critical to our defense theory, your Honor, consistent with law
20 of the Second Circuit law. And it's not a reliance issue, as
21 your Honor recognized.

22 THE COURT: It's not. So find me something else
23 because --

24 MR. FISCHER: Your Honor, I think what we found you is
25 cases where the defense theory has been exactly our theory,

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1 where they argued to the jury that these defendants did not
2 commit a fraud and were not engaged in a scheme to defraud
3 because the victim, the so-called victim wasn't deceived. They
4 knew what they were getting. And if they knew what they were
5 getting, there has not been a fraud, there could not be a
6 fraud, and there could not be a deception. It's a critical
7 component of our case. It's what the underwriting exercise was
8 all about.

9 THE COURT: I hear you and I'm totally sympathetic,
10 but as I immersed myself in these charges and in Judge Sand, it
11 appears, weird though it may sound, that deception is not
12 required. What's required is an intent to deceive.

13 MR. ABRAMOWITZ: And we can disprove an intent to
14 deceive if there is no deception.

15 THE WITNESS: No, no.

16 MR. ABRAMOWITZ: Yes.

17 THE COURT: No. You're leaving out a word. You're
18 leaving out a phrase. You can disprove intent to deceive if
19 you can prove -- you have nothing to prove. Let me make that
20 real clear so that if you ever find yourselves in the circuit,
21 nobody can suggest that I somehow imposed a burden on the
22 defense. You have nothing to prove.

23 But if your defense is no intent to deceive, then what
24 your client knew about what the insurance companies were doing
25 suddenly becomes very important because the mere fact that the

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1 insurance companies were doing it doesn't say anything about
2 your client's state of mind. An intent is your client's state
3 of mind, not the insurance company's state of mind.

4 MR. ABRAMOWITZ: There is at least one exhibit that
5 the government put in today -- and we haven't had a chance to
6 review it -- that proves just that.

7 THE COURT: Well, great. I haven't even seen the
8 exhibit that came in today.

9 MR. ABRAMOWITZ: It's in evidence. It's a letter from
10 the underwriter to Mr. Binday saying all this stuff is all
11 wrong, but I hope you have a happy new year. I'm giving you
12 the policy.

13 We can show you that exhibit. And that's the kind of
14 thing that this whole case has been about, that they knew
15 exactly what they were getting. They were putting blind eye,
16 as you put it yesterday, because they wanted the IOLI business.
17 They had the tax returns, then they did away with the tax
18 returns. The whole point -- and that goes to what my client
19 knew. If my client knows that they're not requiring tax
20 returns and they're not requiring all these other things and
21 accepted that nonsense letter from accountants, then they are
22 not being deceived. And that is the whole point.

23 MS. McCALLUM: Your Honor, that's a defense. Of
24 course Mr. Abramowitz can raise that defense based on intent to
25 defraud.

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1 THE COURT: So what you're saying is I can put the
2 language as long as I put it in the right place, which is the
3 intent paragraph.

4 MS. McCALLUM: Right, your Honor.

5 MR. ABRAMOWITZ: It should be around the negligence
6 part.

7 THE COURT: It's not about negligence. I'm sorry.
8 It's not. I will not put it there. I may consider putting
9 some language of that ilk close to the word intent, which is on
10 the preceding page.

11 MR. ABRAMOWITZ: Okay.

12 THE COURT: And let me think about how I would do
13 that. But it has nothing to do with negligence, nothing.

14 It is certainly fair argument, Mr. Abramowitz, for you
15 to argue that your client could not possibly have had an intent
16 to deceive the insurance companies because he was receiving
17 letters from insurance companies saying we knew, we know you're
18 sending us false information. We don't care. We're going to
19 give you the policy. That is an argument that you can make if
20 there's evidence in the record to support it.

21 MR. ABRAMOWITZ: There is. But there's also, your
22 Honor, what's going through the insurance company's mind. It
23 also goes to the credibility of the insurance company witnesses
24 because --

25 THE COURT: What's going through the insurance

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1 company's mind has nothing to do with your client's state of
2 mind.

3 MR. ABRAMOWITZ: It does because it gets communicated
4 by conduct, your Honor.

5 THE COURT: Only if it gets communicated. You can
6 argue that it has been communicated. But it's still only
7 relevant to your client's state of mind.

8 MR. ABRAMOWITZ: And but there's an inference to be
9 drawn from the conduct of the insurance companies.

10 THE COURT: I don't disagree. You can argue that and
11 it's relevant to your client's state of mind.

12 MR. ABRAMOWITZ: Wherever you put it, as long as
13 there's language to that effect, that's fine.

14 THE COURT: I'm going to have to play with this.
15 What else do you have?

16 MR. FISCHER: Your Honor, just on the victim point, if
17 we're here and the law is you need -- if there's no deception,
18 if the victim is not deceived there isn't a fraud, then we have
19 a big problem. We heard a lot from insurance companies about
20 how they didn't want these policies, didn't want these
21 policies. And then we showed some evidence that maybe they
22 did.

23 And now we're going to be in a situation where we
24 should be able to argue to the jury, ladies and gentlemen of
25 the jury, there is no victim in this case because the victim

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1 that the government says is a victim wanted exactly what they
2 said they didn't want.

3 THE COURT: And here are the two things that follow
4 from that that are relevant to the argument you will make to
5 the jury.

6 One, so they can tell you, they can sit on this stand
7 and tell you that these representations were material in the
8 sense that they could, they could induce someone to make a
9 decision. But in point of fact, ladies and gentlemen, actions
10 speak louder than words and they're obviously not material to a
11 reasonable insurance company because AIG is a reasonable
12 insurance company, Lincoln is a reasonable insurance company.
13 These are the biggest insurance companies in the country.
14 They're all reasonable insurance companies and they knew and
15 they issued the policies anyway. So you are perfectly free,
16 ladies and gentlemen, to conclude that this was not the kind of
17 misrepresentation that could, that was calculated to influence
18 an insurance company. You can conclude that these were not
19 material. That's one thing that you can argue.

20 And the other thing that you can argue, if there is
21 evidence that Mr. Binday or Mr. Kergil or Mr. Resnick knew that
22 the insurance companies had it all figured out and were
23 nonetheless issuing the policies, if there is such evidence,
24 you can say how can my client possibly have intended to deceive
25 the insurance companies? My client was made perfectly aware of

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1 the fact that the insurance companies were on to this and they
2 were issuing the policies and they issued them and they issued
3 them and they issued them.

4 Those are your arguments and they fit perfectly in
5 with the screwy law of mail and wire fraud, which is not the
6 same law as state law fraud which doesn't involve things like
7 schemes. It's just fraud. Did you fool someone? You're
8 guilty.

9 MR. FISCHER: Your Honor, you're going to play with
10 that.

11 THE COURT: I'm going to play with this. I'm going to
12 play with this because I don't disagree with you that that has
13 some relevance to intent.

14 MR. FISCHER: Okay. And materiality.

15 THE COURT: Well, materiality, I'm --

16 MR. FISCHER: I understand.

17 THE COURT: In the end, folks, you got to make your
18 own arguments to the jury. Much as I would love to jump over
19 the bench and do it for everybody in the room -- I'd like to
20 make hers, I'd like to make yours. It would be a whole lot of
21 fun. There are those who say I should never have stopped doing
22 it. But I'm not going to do it, okay. You have to do that for
23 yourself. And the jury charge is not -- that's why I don't
24 marshal because the jury charge is not the time for me to make
25 your arguments. It's just not.

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1 Okay. What else does the defense have?

2 MR. ABRAMOWITZ: One minute, your Honor.

3 MR. FISCHER: We need a second to confer.

4 Okay, your Honor, I think we can move away from
5 page 30.

6 THE COURT: Okay.

7 MR. FISCHER: The next thing I would raise is page 36.
8 I just don't know why we need an aiding and abetting charge in
9 this case, your Honor.

10 THE COURT: Why do we need an aiding and abetting
11 charge in this case?

12 MS. McCALLUM: It's charged in the indictment, your
13 Honor.

14 THE COURT: So what?

15 MS. McCALLUM: Can I confer for a moment, please.

16 THE COURT: Either they did or they didn't do it.

17 Maybe for Mr. Kergil. I do have to remember here that
18 there are three defendants and it's entirely possible, I
19 suppose, that at least one of them could be found guilty as an
20 aider and abettor of someone else's scheme.

21 MS. McCALLUM: Your Honor, I think that is correct and
22 the government would request that we maintain that charge.

23 MR. STAVIS: I don't believe there's any view of the
24 evidence in the light most favorable to the government that
25 would support such a charge, your Honor, just speaking on

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1 behalf of Mr. Kergil.

2 MR. FISCHER: We agree with that, your Honor, and
3 that's why I raised the issue.

4 THE COURT: Okay. I'm going to keep it.

5 Next.

6 MR. FISCHER: Your Honor, I want to move to two
7 supplemental requests we raised.

8 THE COURT: I got to find your piece of paper.

9 MR. FISCHER: I might even have an extra copy.

10 THE COURT: I've got it. There it is. Got it.

11 MR. FISCHER: Page 5, your Honor, supplemental request
12 No. 4, breach of a corporate policy alone does not constitute
13 mail or wire fraud.

14 THE COURT: That's true, but we don't have a corporate
15 defendant. We don't have an employee of a corporation; we
16 don't have an employee of an insurance company here as a
17 defendant. If we had an employee of an insurance company here
18 as a defendant, I would have to tell the jury just because this
19 employee breached company policy, it's not necessarily a crime.
20 There's no issue of that with these three gentlemen. They were
21 not employed by insurance companies.

22 MR. FISCHER: Well, I think the government would take
23 the position that you have people who were expect -- people,
24 including these defendants, who were expected to abide by
25 certain corporate policies, certain corporate policies of the

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1 insurance companies.

2 THE COURT: Are you arguing they were bound by
3 corporate policies, Ms. McCallum? It's a yes or no question,
4 Ms. McCallum.

5 MS. McCALLUM: It's not essential to our argument, but
6 yes.

7 THE COURT: Fine. If you're making it, I'm charging
8 it.

9 MS. McCALLUM: That's fine. We don't have an
10 objection to this charge. Nor do we have an objection I think
11 to the next one is page 6, right?

12 MR. FISCHER: Your Honor, page 6, supplemental request
13 No. 5, legality of stranger-owned life insurance, STOLI, not at
14 issue in this case. I can get into the reasons why, your
15 Honor, but the government doesn't object.

16 THE COURT: If the government doesn't object, fine.
17 Personally I think it's pertinent to materiality, but okay.
18 The government doesn't object. I'm charging it.

19 MR. ABRAMOWITZ: So we're left with the one that
20 Ms. McCallum.

21 THE COURT: There's one I'm working on.

22 Let me address all of your supplemental requests.

23 MR. FISCHER: Your Honor, I think we may be in a
24 position where all of them have now been addressed.

25 THE COURT: That's good because like articulating the

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1 defense theory of the case was not something I planned to do.
2 I thought you should do that yourself.

3 MS. MURRAY: We were taking notes though.

4 THE COURT: I can't restrain myself, as Ms. Murray
5 knows entirely too well.

6 Okay. All right. So I'll figure out a place for
7 these two things to go.

8 Can Mr. O'Neill send you -- can I go grapple with
9 this? And you really have work to do.

10 MR. ABRAMOWITZ: I need to know the benefit.

11 THE COURT: You'll know, but you'll know within an
12 hour.

13 MR. ABRAMOWITZ: All right.

14 THE COURT: Why should you sit here -- off the record.

15 (Discussion off the record)

16 MR. ABRAMOWITZ: Were you describing me, your Honor?

17 THE COURT: No. I described someone else, a very
18 famous story in the New York Times Magazine which led to a lot
19 of jokes where I worked at the time.

20 Okay. So I'm going to go and I promise you within an
21 hour you will know what I have in mind. And I'm sure that it
22 won't be exactly what the defense wants and the government will
23 be more outraged than the defense, I'm pretty positive. But I
24 need some time to work it out.

25 MR. ABRAMOWITZ: On this issue on the benefits issue

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1 though, I think we have --

2 THE COURT: Benefits issue, what's the benefits issue?

3 MR. ABRAMOWITZ: Benefits expected and contemplated
4 and expected, received -- we're trying to work out an agreement
5 as to what.

6 THE COURT: Anything you work out will be in this
7 charge in haec verba even if I would say it differently. I
8 promise you anything you work out will be in this charge.

9 MS. McCALLUM: If the parties can't reach agreement on
10 that particular language, what does the Court propose we do?

11 THE COURT: I propose that you each submit to me what
12 language you think is appropriate since there seems to be some
13 ability to believe that you can come to an agreement. So I
14 would appreciate it if you would do it like, again, in the next
15 hour. In fact, if you're going to sit here and talk, I'm going
16 to disappear. I'll be happy to come back up.

17 I have a sentencing at what time?

18 THE DEPUTY CLERK: Twenty minutes.

19 THE COURT: It's not going to be a long sentence. In
20 some manner, shape or form, either by bringing me back here or
21 sending it to me in writing.

22 MS. McCALLUM: Thanks, your Honor.

23 MS. CHOI: Thank you, your Honor.

24 MS. MURRAY: Your Honor, I have one issue on the
25 obstruction charge.

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1 THE COURT: Oh, the obstruction charge.

2 MS. MURRAY: Yes. It charges multiple objects.

3 THE COURT: Page?

4 MS. MURRAY: Well, I was looking at page 49, which
5 deals with the second object of the conspiracy. Just overall,
6 the indictment charges a multiple object obstruction
7 conspiracy. However, there's a "to wit" clause, so there's
8 only one thing they're supposed to have done that meets the two
9 objects.

10 THE COURT: Yes, the to wit clause.

11 MS. MURRAY: Yes.

12 THE COURT: You would think the government would have
13 learned by now to get rid of to wit clauses.

14 MS. MURRAY: They only do them in indictments in front
15 of you, your Honor.

16 THE COURT: Apparently so. They cause me no end of
17 grief.

18 MS. MURRAY: Your Honor, the problem here is that
19 there really is only one obstruction issue here, which is the
20 supposed agreement to destroy documents in connection with a
21 grand jury proceeding, and that's what the to wit clause says.
22 I don't see why there should be two objects then because then
23 it just is confusing to the jury.

24 So I would move to dismiss the second object. And if
25 not, I would ask on page 49, essentially the charge says this

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1 is basically the same thing as the other one. So you
2 absolutely have to find beyond a reasonable doubt that they
3 conspired to destroy documents. Otherwise, the problem is that
4 it's possible the jury could think that my client's role in
5 calling up insureds and telling them not to talk to
6 investigators after he knows that the FBI has arrived on the
7 scene could amount to obstruction of an official, a judicial
8 proceeding, and that definitely was not what the grand jury
9 voted because there was a very clear to wit clause in the grand
10 jury and these two overt acts mentioned relate to obstruction
11 of documents. They don't relate to telling insureds not to
12 talk.

13 THE COURT: Do you have a copy of that almost
14 irrelevant document, the indictment?

15 MR. STAVIS: I would join in the application --

16 THE COURT: I'm sure you do.

17 MR. STAVIS: -- on behalf of Mr. Kergil, the
18 application that's been made by my cocounsel.

19 MR. ABRAMOWITZ: Do you need it?

20 THE DEPUTY CLERK: Got it.

21 MS. McCALLUM: Your Honor, can I confer with counsel
22 one more time here?

23 THE COURT: Yes, you can.

24 MS. McCALLUM: Your Honor, we can, I think we can
25 resolve this issue. The government will consent to deleting

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1 page 49 and references to a second object. Our theory is the
2 destruction of emails and documents. We're not going to be
3 arguing anything else.

4 THE COURT: Okay.

5 MS. MURRAY: It's a one object conspiracy.

6 THE COURT: Fine. I'm really happy about that. I'll
7 take care of that problem.

8 Let me go work on your other problem and you work on
9 your other problem.

10 (Adjourned to October 3, 2013, at 10 o'clock a.m.)
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JASMINE JUTEAU	
Direct By Mr. Abramowitz1303

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